

Smoke and Mirrors:
The Development of the East Timorese Police
1999-2009

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All political power is primarily an illusion... Mirrors and blue smoke, beautiful blue smoke rolling over the surface of highly polished mirrors... If somebody tells you how to look, there can be seen in the smoke great, magnificent shapes, castles and kingdoms, and maybe they can be yours.

Jimmy Breslin - How the Good Guys Finally Won, Notes from an Impeachment Summer, pp. 33–34 (1975).

I certify that the substance of this thesis has not already been submitted for any degree.
This work is my own unless otherwise stated.

A handwritten signature in black ink, appearing to read 'Bu Vicki Elizabeth Wilson', with a long, sweeping horizontal line extending to the right.

Bu Vicki Elizabeth Wilson

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Acronyms and Foreign Terms

Acronyms

AAK	<i>Aliansi Anti Komunis</i> (Anti-Communist Alliance)
AAP	Australian Associated Press
ABC	Australian Broadcasting Corporation
AFP	Australian Federal Police
ANTI	<i>Aliansi Nasional Timor Leste Ba Tribunal Internasional</i> (Timor-Leste National Alliance for an International Tribunal)
ABRI	<i>Angkatan Bersenjata Republik Indonesia</i> (Indonesian Armed Forces)
AMP	<i>Aliança para Maioria Parlamentar</i> (Alliance of the Parliamentary Majority)
APODETI	<i>Associação Popular Democrática Timorese</i> (Timorese Popular Democratic Association)
ASDT	<i>Associação Social Democrata Timorese</i> (Timorese Social Democrat Association)
AusAID	Australian Agency for International Development
Bakorstanas	<i>Badan Koordinasi Bantuan Pemantapan Stabilitas Nasional</i> (National Stability Coordination Agency)
BPU	Border Patrol Unit
BriMOB	<i>Brigade Mobil</i> (Mobile Brigade)
CAVR	<i>Comissão de Acolhimento, Verdade e Reconciliação</i> (Commission for Reception, Truth and Reconciliation)
CCRDSS	Coordinating Committee for the Reform and Development of the Security Sector
CIVPOL	United Nations Civilian Police
CNRM	<i>Conselho Nacional da Resistência Maubere</i> (National Council of Maubere Resistance)

CNRT	<i>Conselho Nacional de Resistencia Timorese</i> (National Council for Timorese Resistance)
CoI	United Nations Special Commission of Inquiry
CPD-RDTL	<i>Concelho Popular pela Defesa da República Democrática de Timor-Leste</i> (Popular Council for the Defence of the Democratic Republic of East Timor)
CPLP	<i>Comunidade dos Países de Língua Portuguesa</i> (Community of Portuguese Language Countries)
CPPF	Conflict Prevention and Peace Forum
CSP	UNPOL Close Security Protection Unit
CTF	Truth and Friendship Commission
DCAF	Geneva Center for Democratic Control of the Armed Forces
DDR	Disarmament, Demobilisation and Reintegration
DFID	UK Department for International Development
DGS	<i>Direcção Geral de Segurança</i> (Portuguese Secret Police)
DPKO	(United Nations) Department of Peace Keeping Operations
DSRSG	(United Nations) Deputy Special Representative of the Secretary-General
ETAN	East Timor Action Network
ETPS	East Timor Police Service
FALINTIL	<i>Forças Armadas de Libertação Nacional de Timor-Leste</i> (Armed Forces for the National Liberation of East Timor)
F-FDTL	<i>FALINTIL-Forças Defesa de Timor-Leste</i> (East Timor Defence Force)
FPU	(United Nations) Formed Police Units
FRAP	Falintil Reinsertion Assistance Program
FRETILIN	Frente Revolucionária de Timor-Leste Independente (Revolutionary Front for an Independent East Timor)
Garda Paksi	<i>Garda Pemuda Penegak Integrasi</i> (Youth Guard for Upholding Integration)
Golkar	<i>Golongan Karya</i> (Federation of Functional Groups, Indonesian Political Party)

GNR	<i>Guarda Nacional Republicana</i> (Portuguese Republican Guard)
GTZ	<i>Deutsche Gesellschaft für Technische Zusammenarbeit</i> (German Society for Technical Cooperations)
HRTJS	UNMIT Human Rights and Transitional Justice Section
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICG	International Crisis Group
ICITAP	International Criminal Investigative Training Assistance Program
ICJ	International Commission of Jurists
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
INTERFET	International Force in East Timor
IOM	International Organization for Migration
IRCT	International Rehabilitation Council for Torture Victims
ISF	International Stabilisation Force
JAM	Joint Assessment Mission [for the Timor-Leste Police Service]
JFAT	Joint Field Assessment Team
JSMP	Judicial System Monitoring Programme
JSSR	Justice and Security Sector Reform
JTC	Judicial Training Center
JTT	Joint Technical Team
Kopassus	<i>Komando Pasukan Khusus</i> (Special Forces Command)
Kopkamtib	<i>Komando Operasi Pemulihan Keamanan dan Ketertiban</i> (Command for the Restoration of Security and Order)
Kodim	<i>Komando Distrik Militer</i> (Military District Command)
KOTA	<i>Klibur Oan Timor Asuwain</i> (Association of Timorese Heroes)
KPP-HAM	<i>Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor Timur</i> (Indonesian Commission of Investigation into Human Rights Violations in East Timor)

KOMNASHAM	<i>Komisi Nasional Hak Asasi Manusia</i> (Indonesian Human Rights Commission)
MAG	Martial Arts Group
MINUSTAH	United Nations Stabilization Mission in Haiti
MOU	Memorandum of Understanding
MUNJ	National Unity Movement for Justice
NDI	National Democratic Institute
NGO	Non-Government Organisation
NPP	National Priorities Program [of the East Timorese Government]
nurep	<i>nucleos resistencia popular</i> (clandestine resistance network)
NZAID	New Zealand International Aid and Development Agency
OECD	Organisation for Economic Co-operation and Development
OECD-DAC	Organisation for Economic Co-operation and Development Development Assistance Committee
OHCHR	(United Nations) Office of the High Commissioner for Human Rights
ONUSAL	United Nations Observer Mission in El Salvador
PAN	<i>Partai Amanat Nasional</i> (National Mandate Party, Indonesia)
PAG	Police Assistance Group
PD	<i>Partido Democrático</i> (Democratic Party, East Timor)
PDHJ	Provedor for Human Rights and Justice
PDI-P	<i>Partai Demokrasi Indonesia Perjuangan</i> (Indonesian Democratic Party of Struggle)
PEDU	Professional Ethics and Deontology Office
PEO	Professional Ethics Office

PIDE	<i>Polícia Internacional e da Defesa do Estado</i> (Portuguese Secret Police)
PKF	(United Nations) Peace Keeping Forces
Polda	<i>Polisi Daerah</i> (Indonesian provincial level police)
PNTL	<i>Polícia Nacional Timor-Leste</i> (East Timorese police force)
POLRI	<i>Polisi Republik Indonesia</i> (Indonesian National Police)
PSD	<i>Partido Social Democrata</i> (Social Democratic Party)
PTSD	Post-Traumatic Stress Disorder
PUN	<i>Partido Unidade Nacional</i> (National Unity Party)
RAMSI	Regional Assistance Mission to Solomon Islands
RDTL	<i>República Democrática de Timor-Leste</i> (Democratic Republic of East Timor)
RESPECT	Recovery, Employment and Stability Program for Ex-Combatants and Communities in Timor-Leste
RRR	Reform, Restructuring and Rebuilding [of the PNTL]
SA	Supplemental Agreement
SARET	Special Autonomous Region of East Timor
SCU	Serious Crimes Unit
SCJ	Superior Council of the Judiciary
selcom	<i>selular comunicação</i> (village level clandestine network)
SOFA	Status of Forces Agreement
SoSS	Secretary of State for Security
SPC	Superior Police Council
SPSC	Special Panels for Serious Crimes
SPU	Special Police Unit
SMSG	Special Representative of the Secretary-General
SSR	Security Sector Reform/Security System Reform
SSSU	(UNMIT) Security Sector Support Unit

TNI	<i>Tentara Nasional Indonesia</i> (Indonesian National Army)
TAF	The Asia Foundation
TJSC	Transitional Judicial Service Commission
TLDPD	Timor-Leste Police Development Program
TLPS	Timor Lorosa'e Police Service/Timor-Leste Police Service
UDT	<i>União Democrática Timorese</i> (Timorese Democratic Union)
UIR	<i>Unidade Intervenção Rápida</i> (Rapid Response Unit)
UN	United Nations
UNAMET	United Nations Assistance Mission in East Timor
UNAVEM	United Nations Angola Verification Mission
UNDP	United Nations Development Program
UNEF	United Nations Emergency Force
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Mission in Kosovo
UNMISSET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMO	United Nations Military Observer
UNODC	United Nations Office on Drugs and Crime
UNOTIL	United Nations Office in Timor-Leste
UNPol	United Nations Civilian Police
UNSG	United Nations Secretary-General
UNTAET	United Nations Transitional Administration in East Timor
UNTAC	United Nations Transitional Authority in Cambodia

UPF	<i>Unidade Patrulhamento Fronteira</i> (Border Patrol Unit)
URP	<i>Unidade de Reserva da Policia</i> (Police Reserve Unit)
USAID	United States Agency for International Development
USIP	United States Institute for Peace

Foreign Terms

Adat	Customary Law
Aitarak	Thorn (name of militia group)
Aldeia	Hamlet
Anak buah	Children
arraias	Warriors
Bapak	father
Bupati	Head of Kabupaten (Indonesian administrative unit or district)
Camat	Head of Kecamatan (Indonesian administrative
capitão	Captain
Celcom	Hamlet-level resistance structure (from Célula da Comunidade, or Celular Community)
Chefe de suco	Village chief
cipaio	East Timorese native police during Portuguese occupation
Conselho	Council
Dato	Village chief
Firaku	Population of ‘eastern’ East Timor
Juramentu	Blood oath
Kepala Desa	Village chief
Koronel	Colonel

Lia Nian	Owner of the Words
Liurai	Village Chief
Loro Monu	western
Loro Sa'e	eastern
makar	subversion
Meo	Warrior
moradore	Civilian militia member
Palacio Governo	principal East Timorese Government offices in Dili
palmatória	Severe beatings
Naijuf	Village Chief
posto	Sub-District
Sarjana supermi	Instant noodle scholars
Suco	Village
tenente	lieutenant
Tobe	customary ritual leader with authority over land, forests, and water (Oecusse)
topasses	descendents of Portuguese and local inhabitants from the island of Solor and later Larantuka in eastern Flores
Uma lulic	Sacred House
Usif	king for the domain of Ambeno/Oecusse:

Abstract

Although international involvement in police-building and reform is increasingly common, success has been elusive. Much of the policy and academic literature is process-oriented and technical in nature. However, the critical literature recognises that police-building is a political as well as technical undertaking, emphasising the imperative of “paying attention to the local context”, as well as ensuring “local ownership”. I argue that in practice paying attention to the local context rarely occurs, and that the concept of local ownership is poorly theorised. Further, I argue there has been little exploration of how the relationship between the capacity builders and the recipients of that process conditions the outcome of the exercise.

This thesis is a case study of the construction and reconstruction of a post-conflict police force under international and national direction from 1999 to 2009. The Polícia Nacional Timor-Leste (PNTL) was initially developed under the auspices of a United Nations transitional administration (UNTAET), and subsequently managed by the sovereign East Timorese government. A violent political and security crisis in 2006 saw the nation’s police and military unravel, resulting in a request for foreign security assistance and a new United Nations mission (UNMIT). UNMIT was mandated, among other things, to assist the sovereign government to reconstruct the PNTL. In essence the United Nations has been involved in constructing, or reconstructing, the PNTL on two occasions.

I examine the way that the concepts of local ownership and local context are used in the narrative about police building in East Timor, recognising that international police builders bring their own individual and institutional contexts with them which influence, and interact with, other local contexts. I interrogate the contest between international and national security actors over ownership or sovereignty of East Timor’s police and military, as well as the associated contest over the reform process. In addition I examine a manifestation of local ownership that relies on innovations in the maintenance of order in a situation where the effective reach of state law and justice mechanisms is limited.

The lacks of international and national capacity, as well as a reciprocal failure to develop crucial working relationships, are also central to the failure to build a sustainable state police institution in East Timor. More importance has been placed on appearing to reconstruct the PNTL than actually doing it, most apparent in the 2009 ‘hand over’ of policing responsibilities from UNPOL to PNTL, while PNTL remains largely

unreconstructed. I argue the handover is an example of regulatory ritualism, characterised by multi-layered fictive qualities; contributing to the continuing institutional fragility of the PNTL. I explore the general proposition that external post-conflict police building must be predicated on how the relationship between insiders and outsiders informs the complexities and opacities of local ownership.

The ritualism present in current police reform and security sector review efforts has opened the door to the substance of Carl Schmitt's exceptionalism. There are grounds for the fear that the exception of the present, infused with authoritarianisms from external and internal colonialism of the recent past could become the pattern of the future. Alternatively, that prospect could be headed off by a UN and a national democratic leadership not itself ritualistic about rule of law.

Smoke and mirrors in the title of the thesis refers to a deception or trickery in a political context. I argue the reconstruction of the East Timorese police has been more focussed on form than substance. Smoke also seems an apt metaphor for a police force developed out of the ashes of the 1999 violence, and then reconstructed after the crisis of 2006. 'Mirrors' refers to the observed phenomena of international police builders wishing to develop a police force 'in their own image'. It also refers to the authoritarian legacies of East Timor's history which are mirrored in the trajectories the police force is currently following.

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Chapter 1

1.1 Introduction

This thesis examines the development of East Timor's¹ police force, the Polícia Nacional Timor-Leste (PNTL),² under international and national auspices, between 1999 and 2009. Although the police force was not inaugurated until 2000, I have chosen to begin the story at the commencement of the United Nations Transitional Administration in East Timor (UNTAET) mission. The account ends in 2009 when I made my final fieldwork trip to East Timor. This was a time when policing responsibilities were in the early stages of a district-by-district, and unit-by-unit, handover from the United Nations Police (UNPOL)³ to PNTL, but before responsibility for executive policing⁴ is handed back from UNPOL to the PNTL. This will occur at a time yet to be determined.

The thesis is the first full length study of the construction and reconstruction of the East Timorese Police. It provides a case-study of a post-conflict police force that has been (re)constructed by the UN, in the same place, on two occasions. This offers an opportunity to determine the responsiveness of the UN to the things that have been, or should have been, learnt. The UN (and other international organisations) is increasingly called upon to construct or reform police forces in post-conflict situations and determining the organisational responsiveness to lessons learnt, or not learnt, can illuminate an assessment

¹ What is now the Democratic Republic of Timor-Leste has been known by a number of names throughout its history and the names used have depended on the perspective of those using them. This presents difficult choices for an author when examining a period that encompasses pre-contact history, Portuguese colonial rule, Indonesian occupation, the UN interregnum, and the post-independence period. In this thesis I refer to the República Democrática de Timor-Leste (in Portuguese) as 'East Timor', rather than by the now official name 'Timor-Leste'. This is a pragmatic, rather than political decision. It is equivalent to referring to the Federal Republic of Germany as 'Germany' rather than by its official name '*Bundesrepublik Deutschland*'. The term East Timor is common in English language usage and allows consistency for the periods of time prior to, and following, the restoration of independence on 20 May 2002. If referring to the Portuguese colonial period I use 'Portuguese Timor'. I continue to use 'Timor-Leste' if it forms part of the name of an organisation e.g. Polícia Nacional Timor-Leste (PNTL) or Timor-Leste Police Development Program (TLPDP).

² The East Timorese Police underwent a series of name changes. It was formed as the Timor Lorosa'e Police Service in 2000 (United Nations 2000b), became the East Timor Police Service (ETPS) in 2001 (United Nations 2001c: 3), appears to briefly have been the Timor-Leste Police Service in 2002 (United Nations 2002c: 5), and by 2003 had become the Polícia Nacional Timor Leste (PNTL) (Amnesty International 2003: 1). Not surprisingly, there were periods of inconsistency in the names used.

³ The term CIVPOL (Civilian Police) was used formally by the United Nations until 2005 when it was changed to UNPOL (United Nations Police). However a number of United Nations missions were using the term UNPOL prior to that time (Pers. Comm. Gordon Peake 19 June 2009.). In this thesis I use the term CIVPOL until the handover to East Timorese authorities occurred in 2004, then I use UNPOL.

⁴ Executive policing refers to control over the functions of state policing. This function was fulfilled by United Nations police under the UNTAET mandate and the United Nations Mission in Kosovo (UNMIK) mandate. See Dwan (2002) for a discussion of executive policing in peace operations. UNPOL executive policing was reinstated during the UNMIT mandate. See chapter 6 for a discussion of the legal ambiguity surrounding this matter.

of police-building in contexts broader than just East Timor. The issues explored are also of importance in understanding the broader challenges, and limited successes, of post-conflict institution and state-building.

There is a further reason this study is of particular importance to understanding attempts at post-conflict police-building more broadly. East Timor, despite its historical and contemporary complexities and specificities, and legacies of violence, is arguably one of the most benign environments in which to attempt to construct or reconstruct a police force. The population of East Timor is small – only a little over a million people. Following the 1999 referendum the occupying force withdrew completely, and there was no significant external threat to the country's security. From 1999 the UN had an unrivalled mandate to carry out its state-building work, with a high degree of sustained international support. In addition, when the UN first arrived in East Timor there was almost universal domestic support for their presence. Despite ongoing low-level violence and periodic surges in civil unrest East Timor has a comparatively uncomplicated security situation. The same cannot be said for many of the places where post-conflict police-building is attempted such as Afghanistan, Iraq, or the Democratic Republic of Congo. This thesis demonstrates the great difficulties encountered in police-building in East Timor. I suggest this does not auger well for attempts in considerably less benign environments.

Yet international police-building in East Timor has been challenging and the successes have been limited. Before exploring the reasons why this undertaking has been so difficult I survey a number of literatures (Section 1.2) that explore the challenges of state-building and police-building more generally. Much of the former recites an international imperative to participate in state-building of states deemed – using a variety of nomenclature - to be weak, and assumed therefore to pose threats to other members of the international state system, as well as their own citizens. A core feature of this state-building is held to include the development of state institutions, including state-based police forces. The practice of state-building, and police-building, has however proved fraught and with decidedly mixed outcomes. This has led to a search for 'lessons learnt'. These have principally been of a technical or process nature. It has also led to critiques in the academic and policy literature of the inherent assumptions and ideological underpinnings of the desirability and practicality of international state- and police- building. This questioning had been particularly pronounced in relation to places where the modern state, for a variety of reasons, has historically had little reach and little 'traction'. Both those authors searching for 'lessons learnt' and those questioning the ideological underpinnings and practical possibility or desirability of current state- and police-building interventions reference the

need to pay attention to the 'local context', and espouse the purported centrality of 'local ownership' to improved outcomes for such ventures. However, an examination of the literature indicates that 'local context' is rarely apprehended and the term 'local ownership' is inadequately thought through, in particular for the unintended outcomes that may accompany its application. A notable omission from the literature is any examination of how relationships between international and national actors condition the outcomes of an internationally managed police construction and reconstruction process. The thesis interrogates these relationships, demonstrating how discourse on local ownership, combined with failure to apprehend critically influential local context, moulds and conditions the outcomes of the police-building exercise. The thesis shows, however, that the context as experienced by international actors means they are organisationally constrained in apprehending these issues. Although the thesis focuses on the specificities of East Timorese context it is likely that these issues of relationship are also important in other post-conflict police-building, or even broader state-building, contexts.

Using the lens of local context I examine how East Timor's socio-political structures, and histories of colonisation and occupation, influence both reception of, and resistance to, the introduction of a new police institution. I investigate how these factors influence relationships between international and national actors involved in this process and condition the outcomes of the exercise. I conclude that different but congruent agendas lead to a mutually reinforcing ritual of police development more focused on form than substance. This in turn provides a receptive environment for the development of exceptionalism in relation to East Timor's security forces.

The bulk of this chapter explores the background literature relevant to the post-conflict development of police forces by external actors (1.2). I then state the central research questions (1.3), describe my fieldwork and method (1.4) and the structure of the thesis (1.5).

1.2 Background literature: the international experience

In this section I survey overlapping literatures that, read together, provide a background to the business of developing national police forces under international auspices. Although there is a very uneven record of transplanting policing models from one context to another (Ellison 2007; Murphy 2007: 208) a large industry involving the United Nations (UN), bilateral donors, private contractors and Non-Government Organisations (NGOs) is increasingly active in doing just that.

The state-building literature (1.2.1) is concerned with processes of state-building and the development of institutions of state, including the police. The literature that concentrates on police reform and police-building (1.2.2) is generally narrative and process-based. The literature that focuses on the changing role of civilian police in peace operations (1.2.3) details how the mandates and requirements of international police have evolved in the face of changing circumstances and expectations. The literature that explores the particularities of state-building in 'stateless' or 'new subsistence' societies (1.2.4), analyses how introduced institutions of state interact with and transform older and/or sub-national institutions. An examination of the literature and discourse on 'local ownership' and 'local context' (1.2.5) provides an analysis of the evolution of the concepts, and challenges in their application.

1.2.1 State-Building

The state-building literature surveyed in this section includes UN documents and academic literature. The literature tends to be broad in scope with only limited attention to police-building.

Following the end of the Cold War, and the associated collapse of polarised security positions arranged around the interests of the Superpowers, there was an emergence of forms of conflict characterised by their intra-state nature rather than the previously more common conflicts between states. Authors such as Kaldor (1999) and Duffield (2001) refer to these conflicts as "the new wars".⁵ Boutros Boutros-Ghali's 1992 Agenda for Peace (United Nations 1992), and its supplement (United Nations 1995), heralded a recognition that the increase in intrastate conflicts presented the UN with challenges not encountered since the early 1960s in the Congo. A critical feature was the collapse of state institutions. The Report of the UN Panel on Peace Operations (the Brahimi Report) (United Nations 2000a) anticipated a significantly greater role for the UN in building peace following conflict, through the practice of 'peace-building', which it defined as follows:

includ[es] but is not limited to reintegrating former combatants into civilian society, strengthening the rule of law (for example, through training and restructuring of local police, and judicial and penal reform); improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques (United Nations 2000a: 3).

⁵New wars are also seen as creations of globalisation that tend to feature conflicts over identity rather than territory, the use of guerrilla rather than conventional warfare, and the use of global financing networks including organised crime.

Using the term state-building (rather than peace-building) Chesterman (2004: 5) notes that it tends to feature

extended international involvement (primarily, though not exclusively, through the United Nations) that goes beyond traditional peacekeeping and peace-building mandates, ... directed at constructing or reconstructing institutions of governance capable of providing citizens with physical and economic security. This includes quasi-governmental activities such as electoral assistance, human rights and rule of law technical assistance, security sector reform, and certain forms of development assistance.

An extensive literature on state-building has emerged (Milliken 2002; Pei and Kasper 2003; Chesterman 2004; Krasner 2004; Rotberg 2004; Chesterman, Ignatieff, and Thakur 2005; Fukuyama 2005; Paris and Sisk 2009a), with no small part of the literature devoted to the experience of state-building in East Timor (Chopra 2000; Beauvais 2001; Chesterman 2002; Martin and Mayer-Rieckh 2005; Sahin 2007; Moxham 2008; Brown 2009).

Externally-led state-building has become broadly accepted across the political spectrum and is evident both in the approaches and strategy of the UN, and in the foreign policy positions and development strategies of donor nations. A variety of typologies of peacekeeping generations are used, with overlapping definitions and classifications of peacekeeping missions.⁶ Various authors use different terminology to distinguish between 'first-generation peacekeeping', which contemplated no involvement in state-building per se, and subsequent generations of peacekeeping where this involvement developed. Depending on the author's typology, state-building involvement is claimed to have started during 'second-generation', 'third-generation' or 'multidimensional' peacekeeping, as well as in the bilateral initiatives aimed at strengthening or reconstructing state institutions.

Paris (Paris 2004), and Paris and Sisk (Paris and Sisk 2009b), argue that building and strengthening state institutions is central to creating a successful transition from war to peace and that this was often not recognised in early state-building efforts. Paris (2004: 7-8) argues it is necessary to have "institutionalization before liberalization". Other promoters

⁶ See e.g. Diehl, Druckman and Wall (1998), Doyle (2001), Thakur and Schnabel (2001), Lipson (2007), Mingst and Karns (2007). For example 'first generation peacekeeping', also referred to as classical or traditional peacekeeping, and seen as originating after World War Two (WWII) is characterised by Doyle as the deployment of unarmed or lightly armed personnel from a number of nations under UN auspices, usually following a negotiated settlement such as a truce or ceasefire. Authors variously refer to 'Second generation peacekeeping' as being characterised by UN involvement in negotiating outcomes to conflicts between states, and/or overseeing early stages of political transitions including elections. Some authors refer to 'third generation peacekeeping' as the UN becoming increasingly involved in the deployment of peacekeeping forces in intrastate conflicts, while others such as Doyle consider 'third generation peacekeeping' occurs when involvement does not require the consent of the parties to the conflict.

of this institutionalist perspective include Fukuyama (2005), Chesterman (2004), and Krasner (2004). This perspective of inadequately built institutions being a driver of instability was also evident in assessments of the 2006 crisis in East Timor (Brady and D.G. Timberman 2006: 1, 5, 7-11; Kingsbury 2007: 24). Critiques of the institutionalist perspective include that there is a confusion between the tasks of state-building and nation-building (Dinnen 2008: 5),⁷ and inadequate consideration of how state/society dynamics condition the effective reach of the state (Migdal 1988: 33-41; Lemay-Hébert 2009: 22-23).

A large part of the state-building literature has generated a search for readily accessible 'best practice' lessons and can be characterised as problem-solving literature. In trying to understand why this 'lessons learned' approach does not produce successful state-building, it is useful to examine some of the critical literature on state-building. This literature does not, in general, consider the state-building 'project' a success, with Pei and Kasper (2003: 1) noting that "historically, nation-building attempts by outside powers are notable mainly for their bitter disappointments, not their triumphs". Morgan and McLeod (2006: 413) contend that those examples of state-building that are deemed to be successful tend to be measured by externally imposed criteria.

Some question our understanding of peacekeeping and state-building as value-neutral exercises (Duffield 2001; Pugh 2004; Chandler 2006). These authors explore the interests and ideological underpinnings of the activities of peacekeeping and its modern corollary of state-building. Pugh (2004: 41) concludes that "modern versions of peace keeping can be considered as forms of riot control directed against the unruly parts of the world to uphold the liberal peace".

Chandler (2006: 1) argues that state-building practices constitute highly invasive forms of external regulation, yet he contends that this cannot be understood merely as promotion of the self-interests of Western actors. He proposes, rather, that state-building forms of regulation act to deny the power wielded and evade accountability for the exercise. Chandler (2006: 5) notes the language used about state-building is focused on capacity-building and empowerment with reference to

⁷ Although the terms 'state-building' and 'nation-building' are sometimes used interchangeably Paris and Sisk (2009b: 15) make the following distinction: "State-building is not synonymous with nation-building. Although the two concepts are related, state-building focuses primarily on public institutions – the machinery of the state, from courts and legislatures to laws and bureaucrats – whereas nation-building refers to the strengthening of a national population's collective identity, including its sense of national distinctiveness and unity".

preparedness, early intervention, strategic planning, international coordination, the importance of the rule of law, the integration of military and civic agencies, the problems of relying overly on elections...demobilisation etc.

He highlights the highly depoliticised and functionalised nature of the language. Chandler (2006: 51, 165-66) argues that sovereignty is recast as primarily to do with capacity, and that the states that are being created are largely sovereign in name only. He contends that production of sound administrative and governance processes, without connection to political process, hinders attempts at cohesion in post-conflict environments and obscures the need to address social and political divisions.

Chandler's (2006: 9-10, 47) central theme of 'empire in denial' is explained as the formal separation of Western-dominated policy processes from the political processes within non-Western states, leading to a disembodied and 'fetishised' state. He argues that this new form of empire works to prevent the establishment of strong links between non-Western states and their societies and results in the phenomena of 'phantom states' whose institutions lack social or political legitimacy. Chandler goes on to argue that it is not the universalisation of the state form that is most problematic but the concealing of its disintegration.

Following the events of 11 September 2001 in the United States, the use of state-building as a tool in the 'war on terror' signalled a change in previous U.S. government derision of the task of nation-building (Chesterman 2004: 4). These attacks also mark a turning point in an increasingly securitised development discourse (Dinnen 2004; Kabutaulaka 2004). Similarly, Australia's foreign policy imperatives, together with its development strategy, were also informed by the war on terror.⁸ Weak, failing or failed states were perceived as havens for terrorism and transnational crime, and as a consequence a danger to the security of their neighbours and the international community (see e.g. AusAID 2006). Morgan and McLeod, following Douglas, argue that this 'securitisation of development' has at its core an idealised form of state structure and functioning and, more problematically, includes "assumptions about ideal relationships between individuals, civil society and particular state institutions" (Morgan and McLeod 2006: 413).

This understanding of Australia's position in a neighbourhood deemed to be increasingly dangerous finds an expression in the notion of an 'arc of instability' that, as initially

⁸ The change of government that occurred in Australia in December 2007 and the United States in January 2009 lead to abandoning the 'war on terror' rhetoric that was so comprehensively associated with the Bush and the Howard administrations. Whether that immediately leads to a decreased conflation of security and development is less likely.

conceived, included a “balkanised Indonesia, a broken-backed Papua New Guinea and a weak New Zealand” (Dibb, Hale, and Prince 1999: 18). Dobell (2004: 244) argued the term became “ a polite way of talking about Indonesia”. Curiously, the concept as adopted by the Australian government changed the geographical definition to exclude Indonesia as explained by the Australian Defence Minister, Brendan Nelson, in 2006:

We cannot afford to have failing states in our region. The so-called 'arc of instability', which basically goes from East Timor through to the south-west Pacific states, means that not only does Australia have a responsibility in preventing and indeed assisting with humanitarian and disaster relief, but also that we cannot allow any of these countries to become havens for transnational crime, nor indeed havens for terrorism (ABC Correspondent's Report. 2006).

For many, such as Fukuyama (2005: xvii), the dangers of weak states and the concomitant imperative for state-building interventions is obvious: “.. because weak or failed states are the source of many of the world’s most serious problems, from poverty to AIDS to drugs to terrorism”. This argument is challenged by Chandler (2006: 189-90): “it is the stuff of fiction to believe that the problems of drugs, crime, terrorism, etc are manufactured in some strange exotic location and then exported to the West”.

Terms such as ‘weak’, ‘failed’, ‘failing’ etc appear to have gained a particular traction in the literature that addresses state function and state-building in the Melanesian region.⁹ Although some authors such as Wainwright (2003) use these terms in a self-evident manner, others have sought to place this in a historical context or question the utility of the descriptions (see e.g. Douglas 2000; Dinnen 2001; Kabutaulaka 2002). Nelson (2006) notes that this collection of terms, used to describe various Pacific Island states, have antecedents dating back over forty years. He contends that

the most significant failure of these labels is that while they attempt to describe a stage reached in a process, they say nothing about what that process is, what causes it and what forces might accelerate it, slow it down or reverse it (Nelson 2006: 1).

He argues that the convenience of the terms obscures the nature of the states as they are. By using his knowledge of the functioning of the state throughout Melanesia, in particular Papua New Guinea, Nelson puts forward some observations, grouped under ten categories that offer more useful descriptions of how the state operates (Nelson 2006).¹⁰ Morgan and

⁹ The term ‘state failure’ is also widely used in relation to post-colonial African state function. See e.g. Olowu and Wunsch (1995) and Hyden (2006).

¹⁰ By way of example one of Nelson’s categories is ‘the optional state’ where a village is essentially beyond the reach of the state, not necessarily through any geographic difficulty, but rather the services that might

McLeod criticise Wainwright's description of the Solomon Islands as a failed state, posing the question of whether it is rather Australia that has 'failed' its neighbour (Wainwright 2003; Morgan and McLeod 2006: 414).

Australia's decision to become involved in a police-led law and order restoration exercise in July 2003, followed by an ambitious state-building exercise in the Solomon Islands marked a turning point in Australian foreign policy imperatives that were increasingly informed by the weak states thesis. The notion of a state-building exercise with a focus on police is predicated on the idea that development is dependent on establishing security, and similarly that security will be improved by development. Failure to apprehend this connection is frequently referred to as a 'conflict trap'. This link between security and development is promoted in any number of academic articles and policy documents (DFID 2002; Collier et al. 2003; AusAID 2004). Duffield (2007: viii-ix) argues, however, that development is not what it appears. Rather than "a benign and practical act of helping others, development is a technology of security [which]... functions to contain and manage underdevelopment's destabilizing effects". Previously Duffield (2001: 2, 5, 13, 26-30) has argued that as the global South¹¹ is increasingly excluded from the conventional global economy, new frameworks for understanding security have emerged that construct those excluded countries and their underdevelopment as dangerous and liable to create instability, terrorism and conflict. This places global South governments in the position of having to demonstrate themselves as fit for inclusion by meeting defined standards of 'good governance'.

In Section 1.2.4 I examine the particular challenges of applying models of state-building developed in Western contexts in places such as East Timor and Melanesia.

1.2.2 Police-building

The police-building literature tends to examine the police reform or (re)construction task in isolation. This literature is generally narrative and process-based, and is characterised by accounts of post-conflict police-building in country or region specific locations, with a tendency to focus on operational issues (Oakley, Dziedzic, and Goldberg 1998; Holm and

normally be provided by a state no longer are (or never were). It is optional in that residents of the village can go and visit 'the state' in a centralised location should they require something particular but it in no way functions in the way that a Westernised state is held to.

¹¹ The terms global South and global North derive from development theory explanations of world inequality and world poverty, where the global South represents developing countries and the global North represents developed countries. A range of competing analytical frameworks have emerged and the utility of the term has been questioned (Thérien 1999). The terms, however, are still in contemporary usage See e.g. Clapp (2009).

Eide 2000); or by attempts to elucidate a best-practice approach through distilling generic lessons (Mobekk 2003; Jones et al. 2005; Marenin 2005; Mobekk 2005; O'Neill 2005; Bayley 2006).

Assessing whether externally assisted police development has been successful is a complex undertaking, with Bayley (2006: 126) observing an unfortunate tendency to measure 'outputs' rather than 'outcomes', noting that "it is much easier for agencies to audit their own activities, especially the expenditure of money, than to collect information happening outside their control" (2006: 123). A further difficulty in determining success is that the reform process is in a sense never finished (Fleming and Rhodes 2005: 192). Stenning and Shearing (2005: 174, 177) argue that reform processes continue to influence the way in which policing takes place after the specific reforms are no longer an explicit focus. Each reform process will produce unintended as well as intended consequences, with subsequent reform efforts needing to 'align' or correct earlier endeavours (Stenning and Shearing 2005: 174).

Additionally, the success of any such process will depend as much, or probably more, on the broader nation-building 'project' as well as the success in addressing key economic and social issues and underlying political divisions. Separating out the effect of a specific police-building project and determining whether the success was due to, or even in spite of, external assistance remains a monitoring and evaluation challenge (Bayley 2005: 209).

Hills (2009a: 64) is critical of the "ambitious claims[that] are made about police reform" and the way in which it is assumed it will resolve issues as complex as conflict and poverty reduction. Hinton and Newburn (2009: 1) similarly note the plethora of "unrealistic police reform proposals" and the accompanying "inflated expectations" of what police reform can achieve. They also emphasise (2009: 24) that "international police reform efforts cannot create the requisite domestic political and cultural conditions for reform". Despite making a case for the specificity of each context they argue (2009: 6) that there is a range of intractable problems that, to a greater or lesser extent, characterise the 'developing democracies' in which police-building typically occurs. The problems identified include "weak democratic institutions, corruption and weak rule of law, significant levels of poverty and inequality, high crime and societal instability and poorly institutionalized channels of police accountability and responsiveness". All of these factors have a major impact on the prospects for police-building.

Police reforms are integrally connected to the need for reform in other parts of governance, consequently many authors situate themselves within either a 'rule of law' approach or a security sector reform (SSR) approach (Mobekk 2005: 3; OECD 2005), though the two approaches can be seen as overlapping or congruent. A rule of law approach advocates that police reforms must be accompanied by development of other related arms of government such as the courts, the prosecution service, the prisons and even the relevant ministries and the parliament. An SSR approach, on the other hand, maintains that one needs to appreciate all the actors responsible for protecting the state and those communities within it. These include core security actors such as police and military, security management and oversight bodies such as ministries and the parliament, justice and law enforcement institutions such as the judiciary and customary justice systems and non-statutory forces such as liberation armies and political party militias (Stanley 2000; OECD 2005; Rees 2006).

There is scant critical attention in the literature to what principles, models or approaches underpin police-building assistance. Of particular relevance to UN assistance to post-conflict police-building is Sheptycki's (2007) optimistic notion of a transnational 'constabulary ethic'. Sheptycki, while noting immense obstacles, argues for the possibility of fostering a fundamentally 'good' and common style of policing, something that we will implicitly know when we see it. Hills (2009b) tests this neo-liberal assumption against the practice of UN policing operations, concluding that the cultural specificity and context of policing will trump the indeterminate, albeit Western, nature of a presumed constabulary ethic.

Much international police assistance is packaged under the rubric of 'community policing'. Similar to the principles of the constabulary ethic the principles of community policing are not well articulated. Fleming (2009: 38) while noting that "defining community policing has generated much conceptual confusion", argues that there is general agreement that "community policing is about partnerships, consultation, and building trust in communities....designed to reduce and prevent crime by increasing interaction and cooperation between local law enforcement agencies and the public....generally involves decentralization and proactive localized initiatives". Both Fleming and Ellison note the widely differing ways that the concept is interpreted and implemented in different jurisdictions (Ellison 2007: 204; Fleming 2009: 38). Mobekk argues that, given the widely disparate understandings of the concept among both UNPOL officers and recipient governments, the concept should not be promoted (Mobekk 2005: 6-7). Criticisms of the community policing concept include how community consultation and mobilisation can

become little more than intelligence gathering activities, of arguable benefit to the community (Bayley 2005: 208).

The literature increasingly pays attention to the foreigners who are charged with carrying out the reform or the assistance, and how their prior experiences and cultural frameworks are challenged in a new environment (Dupont and Tanner 2009; Goldsmith 2009a; McLeod 2009). The tendency for rapid turnover of international advisers, trainers and mentors means that there is no development of relationships and trust in the field, and that the foreigners never gain an adequate appreciation of the local context (Call 2003: 10; Mobekk 2005: 20-21). The difficulty of getting foreigners to think beyond replicating what they know from Washington, Sydney, Lisbon or Suva remains a challenge.

The lack of regular debriefing of personnel upon return from overseas means that donor organisations are not demonstrating a commitment to learning as they go (Bayley 2005: 211). The need for better briefing, training and preparation of staff to be deployed overseas, and the need to have a section of deploying organisations devoted to this matter, or to have staff dedicated to this task, has begun to be appreciated both internationally and in Australia (United Nations 2000a; Wainwright 2004: 7-10). However, it is still the case that the planning and implementation of these programs will be undertaken by many who lack experience either in the particular country or region, or in the principles of development assistance (Dinnen 2004: 4). It is increasingly argued that police reform is far too important to be left to police alone, but must involve area specialists, social scientists and historians, as well as indigenous, women and youth leaders with time allocated for collection and analysis of information about the traditions and practices of the police as well as about society more broadly (Call 2002: 9; O'Neill 2005: 4; Peake 2008a: 154).

In relatively stable and developed countries it is increasingly recognised that security is provided by multiple, and networked, security providers. This is sometimes called plural policing, (Jones and Newburn 2006; Wood and Shearing 2007). Similarly, there are now a small number of academic studies of multi-choice policing in developing or post-conflict countries (Baker 2005a, 2005b, 2008), as well as an increasing number of proponents of multi-layered approaches to security provision, and security sector reform (Baker and Scheye 2007; Scheye and Andersen 2007). In a review completed for the OECD Scheye argues for an approach to security sector reform that is

highly context specific, targeting donor assistance to those providers – state and nonstate actors simultaneously – at the multiple points at which actual day-to-day service delivery occurs...the primary objective is to develop and

strengthen the relationship between service providers (state and non-state) and the users of those services in the marketplaces where they work, in the neighbourhoods where they live and on the roads they travel. The intention is to reinforce the already existing range of choice that users have in fragile states, while developing providers' service delivery to make it more effective, fair, accessible, accountable and rights respecting. At the same time a multi-layered approach seeks to strengthen governance, organizational structures and systems at the local, provincial and national levels (OECD 2007b: 7).

I argue that although in academic discourse there appears to be a growing recognition of the multiple actors involved in policing in developed countries, there is not the same level of awareness, or willingness to incorporate this understanding, by international police-builders working on police development in post-conflict scenarios. This is of particular importance in the 'stateless' or 'new subsistence states' discussed above, where state-centric provision of policing does not necessarily accord with people's lived experience. Of particular note for this thesis is Hinton and Newburn's (2009: 15) contention that "in many developing democracies the police are typically subject to the control of patronage of individual politicians rather than to institutionalized forms of accountability". Peake questions whether the current model of police-building practised by the UN and bilateral donors can be considered tenable, an approach that

attempts to replicate the formal model of policing that is fashioned in developed, or donor, countries and which, oddly, privileges the 'formal' in a way dissonant to the actual plurality of policing service provision (Peake 2008a: 143).

Amongst the 'lessons learnt' of police-building, the importance of 'paying attention to the local context' is frequently listed as of paramount concern. McLeod (2009: 159) suggests that this now *de rigueur* prescription must be more closely interrogated:

In the event that we fail to acknowledge the realities of aid, including unequal power relations and the imposition of foreign values, the notion of adapting foreign assistance to police will simply remain a moral dictum. Alternatively, deconstructing exactly what can and cannot be adapted to local conditions will provide tangible guidance to those seeking to influence policing organisations in a manner that is locally meaningful.

Bayley emphasises how critical it is to understand that local police agencies are not clean slates and criticises many police-building programs for being ahistoric in that they do not pay attention to the pre-existing cultures of the police and the history of the society more broadly (Bayley 2006: 130). Both Rees and Stanley emphasise the difficulty in changing organisational culture and practice if recycling police from previous security institutions, as

well as the political ramifications of selecting police from too narrow a section of the community (Stanley 2000: 119-20, 126; Rees 2004a: 52-54).

Paying attention to consultation and collaboration with local stakeholders is seen as critical to establishing legitimacy of local police in the eyes of the population (Bayley 2006). Various authors stress the importance of 'local ownership' of the process, understanding the history of the conflict, paying attention to the balance of ethnic groups in the current or proposed police force, ensuring that structures will be economically sustainable or advocating a 'country specific approach' (Sismanidis 1997; Bayley 2005; Mobekk 2005; OECD 2005).

Although many authors cite the importance of paying attention to the local context, there is little evidence that an appreciation of the historical antecedents or the cultural context of recipients of police-building are adequately factored into planning or implementing such exercises. The difficulty in imagining beyond transplanted models is exacerbated by the current framing of security concerns in what are conceived as weak states, as well as a lack of appreciation of the limited reach of the state beyond the national capital.

1.2.3 The changing role of civilian police in peace operations

During the Cold War peacekeeping was primarily military in its structure, tasked with observing ceasefires after inter-State wars, and it tended to occur under the auspices of the UN. Since then it has been recognised that the military, due to training and doctrinal differences, are unsuited to carrying out police work. This has influenced an evolving model of peacekeeping (Serafino 2004). Peacekeeping now occurs under a much wider array of auspices, contains both military and civilian elements (including police), it is much more likely to be focused on intra-State conflict and to be undertaken in combination with peace-building activities and proactive attempts to resolve conflict (Findlay 1996; United Nations 2000a).¹²

The Brahimi report (United Nations 2000a: ix) marked a turning point for the UN when it recommended a "doctrinal shift in the use of civilian police in United Nations peace operations, to focus primarily on the reform and restructuring of local police forces in addition to traditional advisory, training and monitoring tasks". The report also

¹² Peace-building is defined by the Brahimi report (United Nations 2000a) as those activities that are "undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war. Thus, peace-building includes but is not limited to reintegrating former combatants into civilian society, strengthening the rule of law (for example, through training and restructuring of local police, and judicial and penal reform); improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques".

recommended changes in the Department of Peacekeeping Operations (DPKO) within the UN to reflect the anticipated enhanced profile of civilian police in peacekeeping, namely the creation of a Civilian Police Division (2000a: xiii). It also recognised that without simultaneous attention to judicial and penal institutions it would be impossible for police to carry out their work effectively. The report proposed the establishment of a unit with the purpose of providing advice to the Civilian Police Advisers office on those rule of law issues that are critical to the effective use of civilian police in peace operations (2000a: 38). The difficulties that Member States have in drawing on their existing domestic police forces, both in terms of numbers and configuration, led to the Brahimi report calling upon states to establish pools of serving police officers, potentially augmented by those who had recently retired, who would be ready to deploy to UN peace operations (2000a: 20-21). It is of note, however, just how few of Brahimi's recommendations have been implemented, ten years after the fact.

Early literature that addressed the changing role of civilian police in peace operations¹³ did so as a footnote to accounts of the evolution of peace operations more broadly. It is only from 1998 that a literature specifically addressing the role of civilian police in peace operations emerged (Oakley, Dziedzic, and Goldberg 1998; Holm and Eide 2000; Hansen 2002). A number of authors chart the development of police roles in UN peace operations through the changing involvement in monitoring, advising, training, broader reform and finally executive policing (Sismanidis 1997; Schmidl 1998; Hansen 2002; Serafino 2004). This does not, however, mean that the police role in UN missions has inexorably moved in the direction of executive policing. To date it is only in East Timor (UNTAET, UNMISSET, UNMIT) and Kosovo (UNMIK) where executive policing has been undertaken from the commencement of the mission, although in Cambodia (UNTAC), Haiti (MINUSTAH), and El Salvador (ONUSAL) executive policing developed, on an *ad hoc* basis as a result of 'mission creep' (Mobekk 2005: 12; Greener 2009: 234).¹⁴ Older style monitoring missions continued to be deployed at the same time as newer and more complex missions.

More recent literature on civilian policing has grappled with the difficulty that the UN has in recruiting and deploying sufficient numbers of UN civilian police, noting a rapid increase in calls for their employment (Hansen 2002: 48-50; Smith, Holt, and Durch 2007: xiii).

¹³ Peace operations, according to the Brahimi report, can include three principal activities: conflict prevention and peacemaking; peacekeeping; and peace-building (United Nations 2000a).

¹⁴ 'Mission creep' is the phenomena of mission engagement changing either as a result of poorly defined initial mandates, or in response to changing circumstances.

Additionally, 'boilerplate' observations abound on the inadequate calibre of police deployed, the insufficiency of their pre-deployment training, and the inappropriateness of their skills for the tasks they are mandated for (Hartz 2000: 38-39; Hansen 2002: 48-63; Mobekk 2005: 19-20; Linden, Last, and Murphy 2007: 162-164; Smith, Holt, and Durch 2007: xvi). Rapid personnel turnover in the mission environment contributes to poor understanding of the local context by UN civilian police (Mobekk 2005: 20-21; Funaki 2009: 9). In particular the repeated failure to recruit police with training and mentoring skills contributes to a failure to fulfill mandated responsibilities (International Crisis Group 2008: 8). Hansen notes the importance of international police understanding the history and context within which they are working e.g. that it is not unusual for there to be significant association between political leaders and criminal networks, that there may have been a history of security forces being used by political leaders to consolidate power, and that corrupt police officers may be unwilling to curb their own previous access to resources and power (Hansen 2002: 79-84, 90-93).

Transfer of responsibility for policing from an executive mission to indigenous authorities requires planning on this matter from the inception of the mission, with particular issues when building police forces in the context of ongoing peacekeeping missions. Rees (2005: 223, 227; 2006: 10) highlights the poor record of the UN in this respect. He identifies problems with viewing development of local security forces as an endpoint, or exit strategy, rather than something to be integrated into a peacekeeping mission from the outset, the rapid transfer from foreign to indigenous public security management, and inadequate attention to overarching security policy, management and oversight structures as key obstacles to success.

1.2.4 State-building in 'stateless' and 'new subsistence' societies

The current global enthusiasm for external state-building is also evident in East Timor and the nations of Melanesia. The difficulties in transplanting institutions of state to foreign contexts have some particularities when considering these locations. All of the states of this region are of recent construction and emerge from a colonial past that has shaped their external and provincial boundaries with apparently little regard for more indigenous groupings and language boundaries (Douglas 2000: 3-4). The nation-building project within these countries, as opposed to the state-building project, is therefore of comparatively recent origin. Nation creation in these countries remains a highly contested area, often influenced by local and regional issues, in opposition to an as yet comparatively unformed

sense of national unity.¹⁵ The introduced Western institutions of state, therefore, have a different relationship to societies than that understood in their places of origin.

Authors such as Lawrence (1969), Hegarty et al. (2004), and Kabutaulaka (2005) explore the difficulties of importing state institutions into societies that are either considered to be 'stateless' or, as conceptualised by Nixon, 'new subsistence societies'. Nixon (2008: xiv) argues that

The defining features of the New Subsistence State include (1) an overwhelmingly subsistence economy corresponding to little or no historical experience of the generation and administration of large surpluses, (2) minimal workforce stratification and labour specialisation, (3) the predominance, especially in rural areas, of traditional authority relations, and (4) the realisation of statehood as a result of either the adoption or bestowal of the state model, rather than the autochthonous development of the state form.

In either case the centralised state and its abstractions of legal order have, in pre-independence times as well as the present, often had little relevance to the population.

Lawrence (1969) used the example of the introduction of the Australian legal system into the Territory of Papua and New Guinea to demonstrate this point. Against the backdrop of impending independence, Lawrence argued that the entirely different social architecture of Australian and New Guinean society meant that attempts to impose Australian law faced radical difficulty. He explains the different mechanisms of social organisation in each society. Australian society is typified as secular, with separate economic, religious, and political-legal aspects, and a further divided or segregated legal system through the doctrine of separation of powers. The focus, therefore, is on the 'citizen-isolate' in relation to the state. New Guinean societies, on the other hand, are characterised as generalised systems that do not separate the religious aspects of life from the other equally interconnected aspects. Control is exerted through complex kinship, marriage and descent networks rather than through the notion of a disembodied legal system, unrelated to its subjects. One's obligations to others are not universal but particular and relative. As the loci of control are not situated in any particular authoritative entity but rather depend on one's relations, Lawrence typifies New Guinean societies as 'stateless'. Additionally Lawrence emphasises the difference between the use of various mechanisms of 'self help' to resolve issues and disputes in the Papua New Guinean context as against the use of Western legal 'remedy'.

¹⁵ This would be more so in the cases where independence is a matter of bestowal rather than, for example in East Timor, where there does exist some sense of national unity created by the struggle for independence. This is offset however by deeply localised identities. See Traube (2007) for a description of how even nationalist discourses in East Timor are reworked according to local constructions.

Contradicting the evolutionary thesis of Maine that “the movement of progressive societies has been from status to contract” (Maine 1861: 170) Lawrence details societies that – rather than carrying out an assimilation of the practice and enculturated values of an imposed legal system – selectively choose and modify what are deemed to be the useful parts (Lawrence 1969: 36-37).

This theme is taken up by Dinnen and Braithwaite (2009) in their advocacy to reconsider the benefits of the colonial *kiap*, or patrol officer, in Papua New Guinea (PNG). The *kiap*, as it evolved, represented an institution notable for its hybridising of imported and local concerns. This is contrasted to the Western urban model of policing that has more recently been transplanted into predominantly rural communities in PNG. These newer models separate fighting crime from other regulatory concerns, in communities which do not have access to the regulatory mechanisms of the metropolis. The integrated nature of the *kiap* is proposed as preferable in this context.

The unexpected consequences of introducing ‘unreconstructed’ state-centric systems of law into ‘stateless’ or ‘new subsistence’ societies is often elucidated in more anthropological approaches to the problem (Lawrence 1969; Dinnen 2000; Hohe 2003; Hohe and Nixon 2003; Nixon 2006). Kabutaulaka (2005) notes that there are limitations to what such an exercise can achieve:

Foreign intervention, while useful in the short term, does not offer an easy solution to internal problems. It might create a quasi-functioning state that is able to restore order and serve the interests of the intervening forces, but it often does not address the underlying causes of civil unrest, nor can it build long-term peace (2005: 302-3).

Almost invariably such external interventions do not acknowledge the realities of existence outside the national capital and can be characterised by a failure to engage with nonstate or subnational actors (Dinnen 2003; Kabutaulaka 2005). Consequently the social foundations of such new institutions are markedly absent, with serious consequences for the sustainability, legitimacy and effectiveness of those organisations.

Similarly Hills notes in another post-conflict arena that

Parallel forms of order emerge as local powerbrokers fight turf wars and international officials apply Western institutional templates. But there is never doubt as to which is the most resilient, for order is founded on agreement and predictability, which are primarily influenced by indigenous norms, cultural undercurrents and legacy issues (Hills 2009a: 120).

Griddon's (2000: 19-20) notion of 'shell institutions', with a corollary in Chandler's 'phantom states', helps explain why in places like East Timor or the Solomon Islands state institutions such as the police can collapse so readily. Shell institutions might appear as recognisable institutions, but in fact they are not the same, they are without the assumed links to the societies they are designed to serve. In considering these shell institutions, developing an understanding of the philosophical underpinnings and motivations of institution builders is only part of the story. It is also necessary to examine what it is about societies that are the recipients of state-building exercises that make transplantation of Western institutions of state seemingly so difficult.

It becomes apparent that models of state-building developed in 'the West' and transplanted to countries such as East Timor or Melanesia, where the state does not traditionally have the same relevance or traction, experience particular challenges. The suitability of transmitting and transferring these 'one-size-fits-all' models as 'the' model has not been adequately examined by state- and police-builders. It is also only examined by a small part of the academy, the majority being content with the self-evident desirability of an institutionalist model.

1.2.5 Enter local ownership

The debates surrounding local ownership are central to this thesis. As well as exhortation to pay attention to the local context the literature on state-building more broadly and police-building more specifically frequently cites the importance of local ownership. The term local ownership emerged originally in a development context in response to poor development outcomes that had been premised on the superiority of western technical inputs. It also reflects a fundamental ideological commitment that people should have agency related to decisions, policies and programmes that affect them. The concept is now considered mainstream. Saxby (2003: 245-247) notes that by 1996 the Development Assistance Committee (DAC) of the Organization for Economic Co-operation and Development (OECD) was asserting that

sustainable development "must be locally owned", and that development co-operation has to be shifted to a partnership model, where donors' programs and activities operate within locally-owned development strategies. Donors should "respect and encourage strong local commitment, participation, capacity development and ownership".

Discussion on local ownership was preceded by several decades by a debate on the need for citizen 'participation'. The foundational work of Arnstein (1969) was critical in interrogating the multiple meanings of participation, arguing that "there is a critical

difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process” (Arnstein 1969: 216). Noting that the term was often used rhetorically and without coherent meaning, Arnstein devised a ‘ladder of citizen participation’ which mapped the extent of citizen power in determining outcomes of government programmes. His eight-level typology of participation and non-participation is as follows:

the bottom rungs of the ladder are (1) Manipulation and (2) Therapy. These two rungs describe levels of “non-participation” that have been contrived by some to substitute for genuine participation. Their real objective is not to enable people to participate in planning or conducting programs, but to enable powerholders to “educate” or “cure” the participants. Rungs 3 and 4 progress to levels of “tokenism” that allow the have-nots to hear and to have a voice: (3) Informing and (4) Consultation. When they are proffered by powerholders as the total extent of participation, citizens may indeed hear and be heard. But under these conditions they lack the power to insure that their views will be heeded by the powerful. When participation is restricted to these levels, there is no follow through, no “muscle,” hence no assurance of changing the status quo. Rung (5) Placation, is simply a higher level tokenism because the ground rules allow have-nots to advise, but retain for the powerholders the continued right to decide. Further up the ladder are levels of citizen power with increasing degrees of decision-making clout. Citizens can enter into a (6) Partnership that enables them to negotiate and engage in trade-offs with traditional powerholders. At the topmost rungs, (7) Delegated Power and (8) Citizen Control, have-not citizens obtain the majority of decision-making seats, or full managerial power (Arnstein 1969: 217).

Although Arnstein’s work received much attention from urban planners and sociologists, it appears unknown to those now grappling with the inchoate meaning of local ownership. And yet many of the rungs of ‘participation’ are evident at different stages in the implementation of ideas about local ownership in police development in East Timor.

Increasingly the vocabulary of local ownership¹⁶ has entered the discourse of state-, nation- and peace-building more broadly, and ‘rule of law’ and ‘security sector’ programming more specifically. It is cited in reports of the UN Secretary-General (UNSG) in relation to the rule of law and transitional justice (United Nations 2004a, 2008d) as well as SSR (United Nations 2008b), the UN ‘Capstone Doctrine’ (United Nations 2008c),¹⁷ policy and practice guides (OECD 2005; Hansen and Wiharta 2007a; Hansen et al. 2007b) and the academic literature (Ebnöther and Fluri 2005; Scheye and Peake 2005; Chesterman 2007; Banal and

¹⁶ Some authors use the alternative terms ‘national ownership’ or ‘domestic ownership’.

¹⁷ The ‘Capstone Doctrine’ or United Nations Peacekeeping Operations: Principles and Guidelines defines the “nature, scope and core business of contemporary United Nations peacekeeping operations”. All other DPKO “directives, guidelines, standard operating procedures, manuals and training materials” are subject to the Capstone Doctrine (United Nations 2008c).

Scherrer 2008; Donais 2008a; Giustozzi 2008; Narten 2008; Nathan 2008; Scheye 2008; Donais 2009; Sending 2009). There is an emerging consensus that lack of local ownership will doom a project or program to failure – indeed it has become mandatory to cite the imperative of local ownership.

Although the term implies varying degrees of control and is seen to have an inherent connection with democracy, there is an absence of agreement on what local ownership means in either theory or practice (Chesterman 2007: 3, 9, 20; Donais 2009: 3). Critics of the concept have argued that, in any event, it is often used rhetorically rather than literally and rarely makes the transition from policy to practice. Scheye and Peake (2005: 245-7) contend that the term local ownership is more aspirational than applied, with apparent commitment to the idea abandoned or subverted in the process of implementation of programmes. I argue that the way the expression is conceived occurs on a continuum, not dissimilar to that proposed by Arnstein. On one end of the continuum is an argument to inform, and perhaps consult. By way of example Gizelis and Kosek (2005) argue that increased local participation will increase the success of humanitarian interventions. Moving along the spectrum Narten (2008) represents a view that can be described as the necessity for ‘sign on’ to ‘legitimate’ externally led programmes, arguing that

the later significant local ownership is achieved and external authority transferred to local representatives, the more local actors tend to challenge the legitimacy of the peace-building agenda and engage in confrontation with international actors (Narten 2008: 369).

Similarly, McFate (2008) speaks of the necessity to ‘engage’ host governments and their citizens. Hansen and Wiharta (2007a: xv) advocate that the “maximum authority possible – in accordance with local capacity, context and levels of accountability – should lie with local stakeholders at any given time”, arguing that as “the local population is the end-user of justice and security systems...[they] must have confidence in the rule of law in order for them to work effectively and equitably”. Hansen and Wiharta’s position on local ownership is arguably circumscribed by judgments on ‘willingness’ and ‘capacity’ of local stakeholders to engage with what some would argue is a predetermined donor process. Finally, Nathan represents a departure from the previous positions and can be considered to be occupying the other end of the continuum regarding the meaning of local ownership. He argues that “the reform of security policies, institutions, and activities in a given country must be designed, managed and implemented by local actors rather than external actors”. He further contends that

The principle is misconstrued if it is understood to mean that there must be a high level of domestic support for donor activities. What is required is not local support for donor programmes and projects but rather donor support for programmes and projects initiated by local actors. The question for donor governments is not “how can we undertake SSR in partner countries?” but “how can we support local actors who want to undertake SSR in partner countries?” (Nathan 2007a: 4).

In addition to the difficulties of pinning down the meaning of local ownership there are a number of inherent contradictions and difficulties in applying the term, whether in post-conflict peacekeeping operations broadly or security sector activities specifically. First, it has been argued that local ownership is problematic because external intervention has usually been required precisely because an existing government or regime has been malevolent or unable to sustain the functioning of their governance responsibilities. This holds a tension with the widely held assertion that without local ownership reform will not succeed (Call 2003: 4; Scheye and Peake 2005: 235; Chesterman 2007: 4).

Second, there are critical neo-liberal assumptions in any intervention about how democracy, economic liberalisation, accountability, transparency and the rule of law will transform the ‘pathological’ recipient state into a functioning liberal state. These assumptions are actually not negotiable by recipients, thereby potentially diminishing or negating the meaning of local ownership (Donais 2009: 5-9).

Third, it is a matter of record that sections of existing government or security services (or indeed a wide cross section of the political elite) may have a vested interest in not reforming or democratising their security forces, or in keeping formal structures deliberately contradictory or vague. In addition to a logic of resistance there may also be institutional inertia, with the organisational culture of security institutions being notorious for their intractability (Call and Barnett 2000: 45-6, 58; Marenin 2000: 94; Marks 2005: 2-6; Scheye and Peake 2005: 236-237). However, recipients of such international assistance often do not unequivocally oppose the liberal democratic model on offer; rather there may be competing agendas present even within a small group of local actors. For example Giustozzi (2008: 215-216) notes in relation to SSR in Afghanistan that

divergence of [local] interests...did not result in an outright rejection of the need for external resources to support the security apparatus. Instead it resulted in a complex compromise where a reform effort based on international standards was carried out on the surface, leaving patrimonial and patronage relations to dominate the core of the security establishment. In this sense it is possible to talk of a facade of reform, where most Afghan actors paid only lip service to international demands, and of shadow

ownership of the security sector where those same actors seized control of the most substantial aspects of the reform effort and subverted them.

The difference between what recipients will agree to formally and what they will be willing to implement in practice can be both confusing and alienating for interveners.

Fourth, even where citizens of the recipient country are involved in designing the process or program they will inevitably turn to foreign models and experiences. This is problematic as there are relatively few successful models of SSR/ police-building to refer to. Furthermore, the models with which recipient countries are most familiar will more than likely be those of a former colonising power or authoritarian regime. Frequently these will not be underpinned by a commitment to human rights or citizen service (Call 2003: 4) and may not comply with the international norms required by donor agencies.

The fifth issue concerns the question of 'which locals' we are referring to. Scheye and Peake (2005: 238-40) contend that in relation to SSR we must know who the 'customer' is, or who the reform is for. This is a prerequisite for determining which of a multiplicity of owners, with different and conflicting needs and wants, we should be engaging with. A simple example is that the needs of parents with children in violent neighborhoods will be different from those of ex-combatants from former liberation armies. There is a tendency in development work, just as in security sector programming, to engage with the political elite rather than with the needs of ordinary citizens (Martin and Wilson 2008: 84). Even at an elite and centralised level there is a danger of being 'captured' by a particular faction during early attempts to understand a complex situation (Rees 2002: 152, 154). Whereas Arnstein was specific in advocating rearrangements of power to enable participation of individual citizens, much of the literature advocating local ownership in peace-building and state-building is very unclear on exactly who they envisage exercising that local ownership. In most cases it appears to be a disembodied 'state' rather than the citizens that comprise the state. Chambers (2008: 25-48) outlines a variety of biases in development inquiry that are equally applicable to the question of which locals are chosen as interlocutors for determining security needs. These include elite bias, spatial bias – that is the tendency to talk to someone in a city or at least next to the main road, gender bias, and user bias – arising from the fact that those who currently use services are more likely to have an opinion about them. There are many factors that militate against interveners engaging with the wide diversity of those that comprise the 'local'. Responding to competing needs and interests can prove an even more fraught undertaking.

Sixth, there appears to be a belief that local ownership is something that can be ‘implemented’ by external actors, or ‘bestowed’ upon local people by benevolent and enlightened peace-builders McFate (2008: 8). criticises the OECD-DAC Handbook on Security System Reform (SSR): Supporting Security and Justice for reciting rhetoric about local ownership but still “portray[ing] SSR as something that gets done to developing countries, not something that they decide to do – and drive and shape – in partnership with donors”. When recipients of external assistance are not impressed by this largesse this leads to fractures in what may already be a weak relationship between insiders and outsiders.

Seventh, in cases where the operating environment and/or relationships have deteriorated, the term can be used by international actors to absolve themselves of responsibility for poor outcomes. As Belloni (2007: 107) has noted in relation to nation-building, “when delays, obstacles, and drawbacks cannot be ignored any longer, they are blamed on the local actors”.

This dynamic between international and national actors involved in police development in East Timor is central to this thesis, as is an exploration of competing narratives about local ownership. It is not my argument that the local ownership baby should be thrown out with its dirty and problematic bathwater, but rather that some of the contradictions involved in local ownership form part of the inchoate ‘local context’ in which development is undertaken. In chapter 8 I argue that a different approach to local ownership, one focused on a more concrete geographical ‘local’, may provide one alternative to only developing state-centric policing institutions.

Examination of the above literature relevant to post-conflict police-building suggests that exhortations to pay attention to local context are rarely apprehended, and the way local ownership discourse is deployed requires further investigation. Similarly, the primarily process-oriented literature on the lessons learned in police-building fails to adequately address the question of how relationships between those implementing and those receiving police assistance condition outcomes. Although the UN has experienced significant expansion in its responsibilities for post-conflict police forces, the question of whether the organisation is able to respond to these challenges can usefully be examined by examining a case of constructing and reconstructing a police force in the same location. These considerations are taken up in the following section.

1.3 Central research questions

In this thesis I ask four interrelated questions:

a) In what ways does 'local context' feature in the development and outcomes of police-building under international auspices?

The police-building literature, like the broader state-building and development literature, stresses the importance of paying attention to the local context. Comparatively little detail is provided on what this might entail. In this thesis, I first identify a number of 'contexts', both historical and contemporary, that influence the development of the police institution in East Timor. I then question to what extent it is possible for a police development program underwritten by international norms and assumptions to attend to, and incorporate, these factors.

b) What notions of 'local ownership' are deployed by international and national actors in the development of a post-conflict police force, and how do these notions manifest?

Similar to the articulated need to 'pay attention to the local context' the literature stresses the importance of 'local ownership' in relation to state-building, security sector reform and police-building. The literature outlines different conceptions or degrees of 'local ownership' and outlines a number of paradoxes present in the idea. While 'local ownership' has long-standing antecedents present in the 'participation' literature from the 1960s, the idea did not feature significantly in the narrative about police development during the UNTAET period. It was used extensively, both implicitly and explicitly, by both international actors and national actors during the UNMIT mandate. I examine the discourses in UN and government documents, legislation, press reports, and accounts of significant political and security developments during the reconstruction of the PNTL to identify what notions of local ownership have been deployed by international and national security actors. I elaborate on the purposes for which the concept is used, and describe two unanticipated manifestations of the idea.

c) In what ways do relationships between international and national security actors condition the outcomes of post-conflict police-building?

The 'lessons learned' in the police-building literature are primarily process-oriented. A critical literature exhorts us to realise that state-building or police-building is a political as well as technical matter. In the thesis, I examine how technical failures can become political issues, as well as how both political and technical factors inform the relationships that develop between international and national actors involved in police construction and (re)construction. These relationships have been under examined, with Barnett and Zürcher (2009) arguing that "the strategic interactions that unfold between the interveners and the intervened upon is an important but neglected explanation for the relative success and failures of contemporary peace-building operations" (2009: 29). I apply two related

frameworks to examine how these relationships condition the outcomes of the police-building exercise. The first is Braithwaite, Makkai and Braithwaite's (2007) framework of 'regulatory ritualism', originally elaborated in the context of aged care, which interrogates how pressures to demonstrate that one is 'doing something' about an identified problem can lead to a variety of rituals of verification, in preference to concrete outcomes. Secondly, Barnett and Zürcher's (2009) idea of a 'peacebuilders contract' examines how conflicting peace-building agendas between insiders and outsiders are resolved, often in ways that produce 'compromised' outcomes that are not really satisfactory to either party. Applied together these two frameworks are able to illuminate the modalities of how relationships condition outcomes.

d) What can we conclude about the capacity of the UN to construct or reconstruct post-conflict police forces?

The UN is increasingly involved in the construction or reform of post-conflict police forces, often preceded by (or at the same time as) a period of peacekeeping and/or executive policing. A significant 'lessons learned' literature addresses these undertakings. For this thesis, the East Timorese situation offers a unique opportunity to compare and contrast two attempts at institution building in the same country by the same institutional actors. It also allows a further testing of the applicability of Sheptycki's (2007) constabulary ethic in a specific case of transnational police development. What can we surmise about the responsiveness of the UN to their country specific and global experiences in these undertakings?

1.4 Fieldwork and method

During 2007 I made two fieldwork trips to East Timor, from 11 to 24 June and from 28 October to 14 November. I made a further trip from 4 to 20 July 2009. The first of these trips was to the capital Dili, the second trip to Dili and the district of Oecussi, and the third to Dili and the districts of Baucau, Lautem and Liquica. These trips were opportunities to interview key informants involved in the reconstruction of the PNTL but were also an invaluable opportunity to collect documents that are not available in Australia.

Additionally, in June/July 2008 I undertook a two week consultancy in East Timor for the World Bank which was coordinating a review of the East Timorese Government's National Priorities Program (NPP). I was responsible for monitoring progress against agreed objectives in the area of 'Public Safety and Security' which encompassed PNTL, F-FDTL (*FALINTIL-Forças Defesa de Timor-Leste* – the East Timorese Defence Force) and the veterans of the resistance. In November 2008, from Canberra, I completed a briefing paper

on the 2008 states of exception and the Joint military police Command for the Conflict Prevention and Peace Forum (CPPF) of the Social Science Research Council (SSRC) in New York. Following my third fieldwork trip I produced another paper for CPPF in October 2009 on the handover of policing responsibilities from UNPOL to PNTL. This was completed together with my friend and former colleague Nelson Belo, Director of Fundasaun Mahein. All of these opportunities have contributed to the work of this thesis.

The choice of Oecussi as a research site on my second trip was made for three reasons – a determination to look beyond what was happening in the national capital, and examine police development in a district that was most distant from, and arguably least affected by, the metropolis; a calculation that my established networks there would to some degree compensate for the limited time I had available, and the ready use and acceptance of Indonesian language – which I speak – in the district. On advice from friends and other researchers I abandoned my intention to compare Oecussi with the district of Viqueque, due to logistical and political reasons. On my third visit I concentrated on the early-stage ‘handover’ of policing from UNPOL to PNTL. On this trip time was once again limited. Lautem was selected as the first district to experience ‘handover’. Baucau was selected both for being ‘on the way’ between Dili and Lautem and for having received unfavourable reports in assessments of readiness for handover. Liquica was similarly selected for having been deemed not ready for handover.

I was fortunate that prior experience in East Timor provided me with grounding in the ethnographic dynamics and cultural habitus of East Timorese society. This meant that upon return I was able to use my networks from previous employment to gain access to people willing to be interviewed, and to talk with friends and former colleagues to try to make sense of a complex and unfolding situation. In January 2000 I made my first trip to East Timor to carry out a review of Oxfam Community Aid Abroad’s (later Oxfam Australia) emergency response. I then lived and worked in East Timor for a total of four years between 2000 and 2004, both in Dili and in the enclave district of Oecussi. During this time I worked for UNTAET on two occasions – in the Headquarters of the Land and Property Unit, and in the District Administration of Oecussi. I later worked as the Director of Judicial System Monitoring Programme and as Country Director of Caritas Australia which had a significant Human Rights, Law and Justice Programme.

The periods of fieldwork for my thesis research were frustratingly short but family commitments set the parameters. Interviews were conducted primarily in English, but also in Indonesian. Working in Tetum would have been preferable. Not only is it one of the

national languages but it has also become much preferred to the use of other languages. However, the use of Tetum in Oecussi is still limited and I knew that it would be easy to work in Bahasa Indonesia.

A variety of methods have been used in the conduct of this thesis. I have analysed a range of published and internet material, as well as unpublished, and sometimes unofficial, government and UN documents that were provided to me. A variety of techniques including discourse analysis and semi-structured interviews were used in order to derive a more complex picture. In chapter 3, on the first construction of the police force, I relied more substantially on primary and secondary documentary materials, as few people involved in the first construction of the police force were available for interview in East Timor during the times I was visiting. I made greater use of interviews, in addition to documentary sources, to examine the reconstruction of the police force detailed in chapter 6. Chapter 2 has relied principally on analysing secondary documentary materials to argue that a particular set of historical legacies is present in East Timor, whereas chapters 4 and 5 examine a range of contemporary developments through the lens of these legacies. Open-ended, semi-structured interviews were carried out with members of the East Timorese Government including the Secretary of State for Security, members of the Provedor's Office including the Deputy Provedor, members of the District Administration in Oecussi, parliamentarians across the political spectrum, and members of the PNTL including the Interim General-Commander in Dili and the Interim Commander in Oecussi. Within the UNMIT mission I interviewed or informally met with international and national staff of the UNMIT Legal Office, UNMIT Political Affairs Office (PAO), UNMIT Human Rights Unit (HRU) (later Human Rights and Transitional Justice Section – HRTJS), UNMIT Rebuilding, Reconstruction and Reform (RRR) Unit, the UNMIT Security Sector Support Unit (SSSU), and members of UNPOL including two successive Commissioners. I also met with members of the Timor-Leste Police Development Programme (TLPDP), Australian Embassy officials and the Norwegian Charge d'Affaires, staff of international and national NGO's including those providing legal aid, and those concerned with justice and security development in East Timor, traditional leaders and members of religious orders. I also took the opportunity to meet with other international and Timorese researchers when our paths would cross in Dili, Darwin or Canberra. Most interviews were carried out in East Timor but a number of interviews were also carried out in Canberra and Melbourne.

1.5 Thesis structure

Chapter 2 explores East Timor's history from the premise that local contexts and histories are significant for understanding why East Timor's police and broader security sector have developed in the ways that they have. I discuss indigenous socio-political organisation, aspects of the history of the Portuguese colonial period and approach to governance, as well as specific elements of introduced political organisation and control during the Indonesian occupation. The chapter also briefly examines the way that the East Timorese resistance movement organised itself at home and abroad during the Indonesian occupation. I contend that pre-existing indigenous social structures continue to shape contemporary political organisation, and that previous authoritarian regimes have enduring legacies that are discernible in some of the trajectories that policing has taken in East Timor.

Chapter 3 discusses the specific case of the development of a post-conflict police force, the PNTL, through international and bilateral assistance. The time frame is from the inception of the PNTL in 2000 up until the 'crisis' of early 2006, which included the collapse of the police force in Dili and at the national headquarters. It is an account of the early history of the institution's development and through the staged handover of districts and management to East Timorese government control. It is also the story of institutional development within its historical, political, social and cultural context. I argue that the ways in which the early development of the PNTL occurred contributed to its eventual fragility.

Chapter 4 picks up the theme of local context by situating the development of the PNTL in the larger rule of law context in East Timor between 1999 and 2009. I review the internationally organised rule of law 'project' which in East Timor has principally consisted of the introduction and establishment of formal legal institutions, including the police, and the development of legislation. I also analyse the way that 'the law' and the 'rule of law project' is perceived and responded to in East Timor, noting the continuing influence of historical legacies identified in chapter 2 as well as the prevalence and influence of significant legal pluralism. I conclude that the political leadership in East Timor is deeply ambivalent about the rule of law and often prefers to address problems through personalised rather than institutionalised means, with consequences for the development of a centralised state police force.

Chapter 5 explores another aspect of local context, the development of the PNTL in the context of the broader security sector in East Timor. I review the global SSR 'project', which, like the rule of law project, is widely regarded as one of the pillars of post-conflict

state-building. I also discuss how security in East Timor is provided by a complex of state and nonstate actors with mobile and overlapping fealties and memberships, noting that the distinction between those who provide security and those who provide insecurity is dynamic and context-dependent. This analysis is in direct contrast to a predominant conception amongst international actors that nation states, by definition, conform to a Weberian model of a state with a monopoly on the legitimate control of violence. This idealised model also assumes a clear distinction between the roles of the police and military and a state with the capacity and willingness to carry out democratic control and oversight functions. However, these assumptions are not empirically demonstrable in East Timor. This has significant implications for the way in which policing has developed in East Timor.

Chapter 6 commences with a description of the ‘crisis’ of 2006, including the unravelling of East Timor’s security forces, which resulted in the East Timorese government calling in foreign forces to re-establish law and order and the establishment of the United Nations Integrated Mission in Timor-Leste (UNMIT). I analyse the consequent (re)construction of the PNTL through an examination of two UNMIT-mandated processes: the reform, reconstruction and rebuilding (RRR) of the PNTL, and the review of the security sector. I consider how these two processes, intended to be cooperative ventures between the UN and the East Timorese government, have experienced contests over sovereignty, problems of capacity and poorly functioning relationships between members of the relevant international and East Timorese organisations. I briefly examine the role of the subcontracted bilateral contributions of the Australian-led Timor-Leste Police Development Program (TLPDP) to this process. The problems identified are informed by the contextual issues identified in chapters 2, 4 and 5, as well as the legacy of the first attempt to produce a police force detailed in chapter 3. I analyse how the UN and the East Timorese government have both concealed the lack of genuine progress being made in this process. I argue that this complex of factors has served to produce a police institution notable for its now institutionalised fragility.

Chapter 7 analyses the ‘states of exception’ and creation of a Joint military police Command, both of which were declared in response to attacks on the President and Prime Minister of East Timor in February 2008. I argue these events were a critical juncture in the emergence of rearranged relationships between international and national actors involved in policing and broader security sector development in East Timor. I contend this was a manifestation of local ownership not anticipated by the UN. I also argue that these events

resulted in rearranged relationships between the PNTL and the F-FDTL, creating a template for a modified division of responsibilities in the future.

In chapter 8 I conclude that a complex of factors has led to the development of a police force which, despite extensive allocation of international resources, remains weak, conflicted and struggles for relevance and legitimacy. I question whether the UN in its present form of organisation has the capacity and ability to carry out this kind of police development work. The case study of the development of the PNTL has highlighted some of the great difficulties of developing police forces under international auspices. This difficulty is accentuated if the enduring legacy of political histories and organisation in that country are not apprehended by those seeking to build new institutions. I pick up on themes of innovations developed by a range of actors to address the limited reach, effectiveness and acceptability of state-centric policing and justice in East Timor. I argue that the way that these innovations are developing in an organic fashion, often with members of the PNTL as significant participants, offers another way of thinking about the concept of local ownership.

Chapter 2

History and its resonances

2.1 Introduction

In chapter 1 I noted that recent literature examining post-conflict police-building under international auspices recites the importance of paying attention to the local context. However, it is much more common for the literature to focus on the technical or process aspects of what external police-builders might do differently. It is rare for the local context to actually be elaborated. The purpose of this chapter is to provide the background to how 'local context' informs police-building in East Timor. I do this through examining aspects of East Timor's history from pre-contact times, and through Portuguese and Indonesian rule. I then analyse the legacies of these histories that are discernible in trajectories policing has taken in East Timor. I demonstrate how these legacies have produced a contemporary situation where political parties and factions place high importance on gaining control, sometimes by force, of the post-independence uniformed forces and their weapons. It has also meant that many Timorese, including members of the political leadership, are doubtful about the possibility of impartial security sector institutions.

An additional layer of East Timor's history and context are contributed by UN missions¹⁸ and the broader international presence from 1999. This also influenced the process of the construction and reconstruction of the police force, and is discussed in chapters 3 and 6 which examine the first and second attempts to build a police force under international auspices.

In this chapter I commence with a brief examination of the nature of authority and socio-political organisation in the autochthonous societies of East Timor. I also examine how the lived experience of Portuguese colonisation and the Indonesian occupation engaged with the mores of autochthonous society. The second part of the chapter provides a brief account of some interconnected legacies of Timorese history. I discuss the limited penetration of the state, the enduring nature of local dispute resolution, a martial heritage that informs a contemporary lack of monopoly on the control of violence, the propensity for personalised exercise of power, and the enduring impacts of violent histories and associated trauma that reinforce longstanding societal fault lines.

¹⁸ UNAMET 11 June 1999-25 October 1999; UNTAET 25 October 1999-20 May 2002; UNMISSET 20 May 2002-20 May 2005; UNOTIL 20 May 2005-25 August 2006; UNMIT 25 August 2006 – present.

The way that 'law and order' is managed and reproduced and adjudication takes place in East Timorese society is of particular interest for this thesis. As will be discussed in later chapters, there are many aspects of the ordering of pre-contact Timorese society which endure and are identifiable to the present day. The way in which these forms of ordering reinforced other forms of authority during the Portuguese colonial period, the Indonesian occupation, the UNTAET interregnum and the 'modern' and 'democratic' institutions of the new independent state provides a sustained theme throughout this thesis. In particular I focus on how these continuities of ordering manifest in ways relevant to the current development of policing and the security sector in East Timor.

2.2 Autochthonous social organisation and maintenance of order

Flying over the island of Timor one is struck by the way that small and isolated hamlets dot the rugged and mountainous country. Authors such as Fox (1988: 261-262, 278) and Nixon (2008: 54-55, 58-59) have noted the primary influence of the geography of Timor on the nature of Timorese social organisation. Timor is characterised by steep slopes, poor soils, unreliable rain and a natural aquifer system given to drying up as irregular sheets of clay are affected by earth tremors. All of these factors ensure that settlements are scattered and agricultural production is low and primarily of a subsistence nature, generating little surplus structure. Fox has argued that

under these conditions the majority of mountain Timorese are too close to bare subsistence to be able to take risks and have so far been unable to develop indigenous social institutions that would facilitate cooperation among larger units of the population (Fox 1988: 278).

Similarly Nixon (Nixon 2008: 59) contends that the generation of a surplus and the need to manage that surplus produced the more complex administrative and organisational processes that are found elsewhere in the archipelago in places such as Java, which are absent in Timor. Arguably the different biogeography found on the eastern side of the Wallace line¹⁹ is also reflected in the different social organisation in that area.

It is difficult to ascertain the nature of Timorese social organisation at first contact, given the absence of documentary evidence and a reliance on mythic histories and oral testimony. Most contemporary researchers generalise from the reports of Dutch and Portuguese colonial administrators, Dutch and British naturalists, missionaries, and explorers as well as the writings of a number of waves of anthropologists who have been able to record Timorese oral accounts directly. However, anthropologist H.G. Schulte Nordholt, while

¹⁹ The Wallace line refers to an imaginary line that runs between Bali and Lombok that separates two distinct biological zones. The thesis was developed by Alfred Russel Wallace (1823-1913) (van Oosterzee 1997).

noting a wealth of early material, expresses frustration with earlier reports that he describes variously as “romanticized” or “lack[ing] the description of reality” (Schulte Nordholt 1971: 327):

Prior to the arrival of the Portuguese in the sixteenth century, Timor comprised two large kingdoms in the western part of the island and a number of small unstable micro-kingdoms in the eastern part of the island. These kingdoms, which appear to have been mentioned in Chinese travel accounts (Ptak 1999: 37) as long ago as the fourteenth century, were usually controlled by a central ruler or *liurai* (Tetum) who received tribute from peripheral associated clans. The kingdoms were subject to shifting patterns of alliances, entailing both the federation of small kingdoms into bigger units and also the breaking off of peripheral tribute providers to form their own ‘centres’ which in turn demanded their own tribute (McWilliam 1996: 128-129).

Warfare was common, with *liurai* being able to call up troops in the tens of thousands when required (Jolliffe 1978: 29). This kind of warfare was, according to Davidson, “stylised and contained within accepted limitations” being preceded by rituals and sustaining few casualties (Davidson 1994:12). War was generally concluded through peace agreements, many of which involved the use of blood oath or *juramentu*, although somewhat different ceremonies are described by H.G. Schulte Nordholt in relation to peacemaking by Atoni (Schulte Nordholt 1971: 326-327; McWilliam 1996: 129; Ospina and Hohe 2001: 22-23; Trindade and Castro 2007: 2; Nixon 2008: 60).²⁰

Day-to-day allegiance for most people in Timor rested with the clan or lineage group, rather than with the *liurai*, and within this context the most relevant source of authority was the *chefe de suco* (Davidson 1994: 11). Within local areas East Timorese political and social institutions are primarily based on the extended family unit or ‘House’ with members descended from a putative common ancestor. The ‘House’ is both literal in that it refers to the *uma lulic* or sacred house which houses ancient and sacred items, but is also functionally descriptive in that it refers to the hierarchically ordered sets of extended families that comprise a House (Hohe 2002a: 571; McWilliam 2005: 28). The most senior House is the family that asserts founder settler status and that has ritual ownership of the area’s fertility. The responsibilities of other Houses follow. Some of the Houses have particular

²⁰ Atoni is an ethnic group present both in Indonesian West Timor and the East Timorese enclave of Oecussi. The language spoken by Atoni is variously referred to as Meto (self-reference), Dawan and Baikenu. Causes of warfare amongst Atoni cited by H.G. Schulte Nordholt include “border-land disputes which in turn were the consequences of claims being asserted by certain groups to sandal-trees, trees with bees’ nests or areca palms [betel]”. He goes on to cite cattle-raids as an important cause of war and failure to provide harvest tribute to a ruler as a common cause of head hunting raids (Schulte Nordholt 1971).

ceremonial responsibilities, another House has responsibility for 'political authority' (as opposed to 'ritual authority'),²¹ and others have responsibilities for issues such as water or security (Hohe 2002a: 572; República Democrática Timor-Leste 2003: 23).

Ospina and Hohe (2001: 28) describe the fundamental concept of dualism present in Timorese cosmology and social structure. It is found in the binary categories of Wife Givers/Wife Takers, female values/male values, newcomer houses/indigenous houses, outside/inside and ritual authority/political authority. The division between, and interactions among, ritual and political authorities remain important even in contemporary discourse regarding sources and resolution of conflict (Trindade 2008: 179-186). A variety of roles responsible for maintaining order/security and resolving conflict can be found in Timorese society. Trindade and Castro explain political leadership as being held by the *liurai*, and ritual leadership as the responsibility of the *dato*, who makes decisions based upon, and through communication with, the ancestors and has the duty to select *liurai* from the 'correct' house. They describe the position of *lia nain* as one of mediator, negotiator and arbiter based upon their role as 'owner of words', referring to their specialist knowledge of ancestral tradition (Trindade and Castro 2007: 21). Although these structures are fairly typical throughout Timor, regional differences in structure have been detailed by a number of anthropologists (Schulte Nordholt 1971, 1980; Clamagirand 1980; Forman 1980; Fox 1980a, 1980b; Traube 1986; Ospina and Hohe 2001).

For example, within Atoni society more broadly, and the district of Oecussi more specifically, there are a range of political and ritual roles that are responsible for different aspects of societal order including the *usif* who corresponds to a *liurai* or *king*, the *naijuf* who is a political authority and the *tobe* who is a customary ritual leader with authority over land, forests, and water (Meitzner Yoder 2005: xiii-xiv, 112-123, 146-151). In addition there is the position of the traditional warrior or head hunter called *meo*. *Meo* means 'cat' in Meto, but also means a warrior who has taken at least one head (McWilliam 1996: 132). The *meo* have a leading role in defending borders in times of crisis and can also be considered akin to 'security guards' (Meitzner Yoder 2005: 160). H.G. Schulte Nordholt elaborates a range of 'Timorese' (meaning in this case Atoni) adjudicative actions including those akin to a

²¹ The House responsible for the political arena was the provider of kings and other political leaders who had responsibility for "defining the borders of the land, for relations with other kingdoms, for conflict resolution, and all other political issues such as conducting wars". Political leaders are dependent on ritual leaders for legitimation (Hohe 2002: 572-573).

trial, auguring,²² and trial by ordeal. All of these could result in the requirement for compensation, fines or the death penalty (Schulte Nordholt 1971: 361-367).

The phenomena described above is not however static and unchanging in the face of external influences. Anthropologists have characterised Timorese societies, together with other societies throughout Eastern Indonesia, as having a particular capacity and propensity to integrate new occurrences, ideas and forms of authority into their existing socio-cosmic frameworks (Ospina and Hohe 2001: 28). In later parts of this chapter I describe how these social structures both endured and accommodated the experiences of occupation and invasion.

2.3 Portuguese colonial occupation

2.3.1 Early contact until 1926

In this section I examine aspects of early colonial history that demonstrates how the comparatively limited reach of the Portuguese state in East Timor was always accompanied by parallel forms of order, a situation that has resonances to the present day. I also discuss the phenomena of the use of auxiliaries by the Portuguese colonisers to bolster their limited control. This drew on a longer history of *liurai* 'temporary armies' as described in Section 2.2. The significance of this phenomena is that it continued to be evident in the way that Indonesian occupiers developed temporary, and essentially disposable, militias as auxiliaries to their military efforts. It is also evident contemporarily in the way that non-state security groups are utilised by members of the political leadership to produce particular political outcomes, and the way that sections of the East Timorese police and military are sporadically used in the same way.

East Timorese societies experienced late, limited and variable penetration by Dutch and Portuguese colonial administrations. Early colonial attempts to exert control over the indigenous inhabitants of Timor and the immigrants known as *topasses*²³ were of limited

²² Auguring is the use of signs and omens to predict the future and outcomes of courses of action.

²³ Topasses or 'Black Portuguese' were descendents of Portuguese and local inhabitants from the island of Solor and later Larantuka in eastern Flores. The word 'topasses' is derived from the Dravidian word 'tupassi' meaning interpreter (Boxer 1960: 351).

success.²⁴ A variety of authors describe mid- to late nineteenth-century Portuguese rule as desultory, noting also the limited developmental efforts of the colonisers.²⁵

The Portuguese landed in Lifau (in the present day district of Oecussi) in 1515 but did not establish permanent settlements until well into the seventeenth century. Following many years of struggle against rival *topasses*, a beleaguered Portuguese Governor finally moved to Dili in 1769. Despite repeated armed attempts to subdue the local population it was not until late in the nineteenth century that any power was exerted over the interior of the island (Boxer 1960: 355; Fox 1996). The Portuguese used *liurai*-associated troops, known as *moradores* or *arraias*, who were called upon as trusted allies to undertake punitive expeditions against recalcitrant political communities. In the early eighteenth century it was estimated that the *liurai* of the eastern half of Timor could muster 40 000 troops (Robinson 2006: 275). Although the literal meaning of *moradore* is ‘citizen’, Timorese regarded it as having connotations of ‘warrior’ (Nixon 2008: 67). The Portuguese first used *moradores* in 1642 to subdue the important ritual kingdom of Wehale in what is now Indonesian West Timor (CAVR 2005: Part III, 9), in 1911 in border disputes with the Dutch (Farram 2004: 102), in 1912 in putting down the Manufahi rebellion (Davidson 1994: 20), in the lead up to WWII (Callinan 1953: 154-155), and in the Viqueque rebellion in 1959 (Gunn n.d.). Finally, in Ainaro some *liurai* still had control of private armies until 1975 (Jolliffe 1978: 134-135).²⁶

Fox (1996: 9) maintains that “for most of the colonial period, control was a matter of pretence and veneer”. He highlights the irony of the protracted negotiations over a period of seventy years between the Dutch and the Portuguese regarding the division of Timor when in reality “neither colonial power controlled the territories over which they were deliberating” (Fox 1996: 10). The assessment of the Portuguese Governor of Dili, Affonso de Castro, in 1860 during these negotiations with the Dutch is enlightening: “our empire on this island is nothing but a fiction” (quoted in Fox 1996: 10).

²⁴ The *Topasses* were rather more successful than the Portuguese in extending their sphere of influence in Timor. They became major sandalwood traders, attacked and burned centres of two Timorese kingdoms (Sonba'i and Wehale) and intermarried with indigenous Timorese, giving rise to a couple of present day Timorese dynasties that continue to contest the position of 'king' in the district of Oecussi. See e.g. Fox (1996).

²⁵ Visiting Dili in 1861 the British naturalist, Alfred Wallace, noted that “The Portuguese government in Timor is a most miserable one. Nobody seems to care the least about the improvement of the country, and at this time, after three hundred years of occupation, there has not been a mile of road made beyond the town, and there is not a solitary European resident anywhere in the interior. All the Government officials oppress and rob the natives as much as they can, and yet there is no care taken to render the town defensible should the Timorese attempt to attack it” (Wallace 2000 [1869]).

²⁶ For more on the role of the *moradores* see Pélissier (1996).

Portuguese Timor was the most far flung and least economically important of all Portugal's colonies and saw little in the way of economic or other development. In the nineteenth and twentieth century the Portuguese introduced militarily-enforced compulsory labour for cultivation of cash crops such as coffee and for the building of roads and replaced the previous tribute system with an onerous head tax on adult males. What had been limited resistance from the *liurai* developed into a revolt in 1861 and subsequent smaller rebellions after this (CAVR 2005: Part III, 9). Davidson contends that each rebellion contributed to the outbreak of the succeeding conflict with an escalating armed response from the Portuguese (Davidson 1994: 14). Eventually Portugal opted to discard its policy of indirect rule and to assume direct administrative and military control of the colony.

The most famous of the anti-colonial wars was the Manufahi rebellion of 1911, sparked by the assassination and beheading of the Portuguese Commander Lieutenant, Luis Alvares da Silva, by Timorese warriors (Davidson 1994: 1). The ensuing rebellion by *liurai* united under Dom Boaventura, *liurai* of Manufahi, involved a blood oath to kill all Europeans and the subsequent attacking of all things Portuguese. The Portuguese made significant use of Timorese auxiliaries in putting down the rebellion and were also required to call on assistance from their other colonies in a war that lasted for almost a year. Many view the Manufahi rebellion as the beginnings of nationalism with Dom Boaventura accorded the title 'the father of nationalism'. However, Davidson argues that, although the Manufahi rebellion was a significant event in the development of resistance to increased colonial domination, it did not yet carry evidence of the beginnings of nationalism. She maintains, rather, that other contemporaneous factors, such as the changing basis of the Timorese economy accompanied by a move for greater Portuguese political control and the expanded power of the military in the civilian bureaucracy, are more important in understanding the rebellion. At this time many of the lower ranking Portuguese military had been sent to Portuguese Timor as punishment for military crime and were notable for their authoritarianism, abuses of power and corruption (Davidson 1994: 2, 5-6).

In the final century of Portuguese administration the Portuguese co-opted local political powers such as the *liurai*, but left lower levels of social and political power intact as it placed less burden on the colonial administration (Nixon 2006: 92). In contrast to the picture of ongoing anti-Portuguese rebellion, a number of anthropologists describe how Portuguese rule not only conformed to Timorese ideas about the appropriate role of the *liurai* who was ordained by the ritual powers to deal with 'outside' powers (Hohe 2002a: 574) Portuguese rule was also conceptually integrated into local authority structures through an understanding of the Portuguese as a younger brother who originated in Timor,

went away overseas, and later returned bringing back political values as epitomised by 'the book and pen'. In this paradigm the role of the Portuguese was to solve violent conflict between warring kingdoms (Traube 1986: 55; Hohe 2001).²⁷

Following the quelling of the Manufahi rebellion, the Portuguese formally abolished local kingdoms and the traditional position of *liurai*. Portuguese approval or confirmation was required for the position of *suco* leader, and two new levels of administration, the *posto* and *concelho*, were instituted.²⁸ Some *liurai* were made subdistrict chiefs in the Portuguese administration and maintained their power in this way; others were replaced with a 'behind the scenes' legitimisation by traditional authorities to regularise an unwanted situation, and others maintained their power through an ongoing recognition of their role by the community. Providing the person in the position could be found to have a link to a 'royal' family, there were mechanisms to pass on ritually the requisite political authority. In this way the new Portuguese administrative system was incorporated and integrated into the existing system (Hohe 2002a: 574-575).

From the early eighteenth century until the end of colonial rule the Portuguese also symbolically integrated the Timorese that they deemed compliant into their own military hierarchy. This was done by bestowing military titles such as *koronel* (colonel) on traditional leaders and also included titles such as *capitão* (captain) and *tenente* (lieutenant) for traditional leaders of lower rank (Nixon 2008: 81-82).

In this section I have detailed how during the early Portuguese colonial occupation the effective reach of the colonial state was limited. In order for the Portuguese to extend their administrative and military control it was necessary for them to supplement their own resources by enlisting Timorese forces allied with sympathetic *liurais*, in the process exploiting and reinforcing existing divisions among Timorese *liurai*. The East Timorese polity adapted to the Portuguese presence with a mix of resistance and opportunistic alliance formation, as well as by being co-opted into the Portuguese administrative order. The Timorese martial heritage and associated ways of organising violence were both reinforced and aggravated by the Portuguese occupation. This situation contributed to a legacy of lack of monopoly on the control of violence, including the use of non-state

²⁷ See also Henley (2004: 87) on the phenomena of the 'stranger-king' in eastern Indonesia, regarding "the widespread appreciation for the usefulness of foreign authority as a way of controlling indigenous conflict and violence through various combinations of third-party mediation, impartial adjudication, and legal enforcement".

²⁸ "A group of *sucos* comprised a *posto* and these *posto* were grouped into a *concelho*. The *concelho* controlled the *postos* through Portuguese administration" (Molnar 2005).

militias by state forces. In turn this contributed to a legacy of the use of personal rather than institutional power. It also laid the foundation for some of the serious societal fault lines that are still discernible in East Timor today.

2.3.2 The Portuguese administrative order 1926-1975

In 1926 there was a military coup in Portugal, and from 1932-1968 Portugal was governed by the authoritarian regime of António de Oliveira Salazar, with implications for all the Portuguese colonies including Timor. Salazar suffered a stroke in 1968 and became incapacitated, the regime continued under Marcelo Caetano (Lewis 2002: 162).

The final stage of Portuguese colonialism in East Timor was interrupted by Japanese occupation during World War Two (WWII). As many as 60 000 Timorese are thought to have lost their lives, and torture, sexual slavery and arbitrary killing was widespread. Testimony to the CAVR²⁹ hearing on the Internal Political Conflict of 1974-75 heard that long standing divisions emerged between those who supported the Japanese and those who supported the Australians during this time (CAVR 2005: Part III, 10).

Following WWII the Portuguese 'reoccupied' East Timor with an expeditionary force of troops sent from Mozambique, who were greeted on arrival by a guard of honour comprising *moradores* from Bacau and Manatuto (Bessa 1992: 142-159). A professional army was maintained including Portuguese soldiers and African recruits, with the police also coming under the armed forces (CAVR 2005: Part IV, 18). During the latter decades of Portuguese rule Timorese experienced forced labour and *palmatória* (severe beatings), although it was often Timorese who had been conscripted as overseers (Jolliffe 1978: 43, 47-48). A system of Timorese paramilitary police called *cipaio* (or *sipao*) was established and continued until the positions were replaced with *guardas auxiliares*. Although the *cipaio* system was last budgeted for in 1961 it was not phased out until the early 1970s.³⁰

From 1959 East Timorese were subject to the *Polícia Internacional e de Defesa do Estado* (PIDE) or Portuguese Secret Police (Gunn 1999: 261). Jolliffe describes the PIDE as "the secret police organisation which, through the use of terror, censorship and a web of paid informers, existed as a state within a state" (Jolliffe 1978: 43).

The extent of PIDE's interests was very broad and included

²⁹ The *Comissão de Acolhimento, Verdade e Reconciliação* or Commission on Reception Truth and Reconciliation (CAVR) was established by UNTAET Regulation 2001/10 with a mandate to establish a truth commission, conduct community reconciliation and make recommendations on the promotion of human rights. The CAVR was able to consider human rights violations between 25 April 1974 and 25 October 1999.

³⁰ Pers. Comm. Ernie Chamberlain 5 October 2009

Timorese at home ...also Timorese in Angola, as well as such unlikely threats as the Timor Oil company, Australian trade union organisations, anti-apartheid campaigners, and even liberals, part of a global monitoring effort to shore up the dictatorship at home and the challenges posed by maintaining a sprawling colonial empire in the age of decolonization (Gunn 1999: 261)

PIDE operatives were also responsible for the assassinations of Mozambican FRELIMO (*Frente de Libertação de Moçambique* or Liberation Front of Mozambique) leader, Eduardo Mondlane, in 1969, and Guinea-Bissau liberation leader, Amílcar Cabral, in 1973 (Gallagher 1979: 388).

Ironically, it was the actions of the PIDE that introduced a group of Timorese men to the as yet unknown anti-colonial struggles in the Portuguese colonies of Africa. Following the 1959 rebellion in Viqueque sixty eight men were sent to prison in Angola where they were able to witness the early stages of decolonisation, become politicised and also learnt Indonesian from other prisoners before returning to Timor (Gunter 2007: 34).

When the Catholic newspaper supplement SEARA, which enjoyed the contributions of a plethora of future leaders including Nicolau Lobato, José Ramos-Horta, Mari Alkatiri, Francisco Xavier do Amaral and Manuel Carrascalão, was finally shut by the PIDE in 1973 it closed off one of the last publication opportunities for an emergent nationalist movement (Gunn 1999: 264).³¹

During the final period of Portuguese rule a number of significant members of the future Timorese leadership were members of the Portuguese colonial army. These included Nicolau Lobato, his brother Rogerio Lobato, Francisco Lopez da Cruz and Roque Rodrigues, the latter two having served in this capacity in Mozambique (Nixon 2008: 107-109, 133).

In 1960 East Timor was listed as a Non-Self-Governing Territory with the UN Decolonisation Committee but little progress towards decolonisation was made. Following the left-wing military coup in Lisbon in April 1974, Colonel Mario Lemos Pires arrived in Portuguese Timor in November of the same year. He assumed the position of Governor with the hope of developing a decolonisation policy, preparing Timorese for independence and addressing a demoralised military. In an interview with CAVR he spoke of his fears before even leaving Portugal that support from the Portuguese government would be neither focussed nor particularly forthcoming, a fear that was realised upon his arrival.

³¹ Although Gunn refers to the PIDE as being responsible for the closing of SEARA by this time the PIDE had been renamed the DGS (*Direcção Geral de Segurança*).

Pires' requests for additional Portuguese troops were rejected with a resultant decrease in Portuguese influence in the colony (CAVR 2005: Part III, 29-30).

Colonel Pires formed the Timor Commission for Self-Determination which encouraged the establishment of civil associations, although it would appear that the Portuguese administration did not believe independence was realistic (CAVR 2005: Part III, 13). Active political parties had not existed until this time. Very quickly three major parties emerged including the Timorese Democratic Union (*União Democrática Timorense*, UDT), which advocated progressive autonomy under Portugal and later supported federation with Portugal and ultimate independence; the Timorese Social Democratic Association (*Associação Social Democrática Timorense*, ASDT), which supported independence and had an explicitly anti-colonial and nationalist stance and later became FRETILIN; and the Timorese Popular Democratic Association (*Associação Popular Democrática Timorense*, APODETI), which favoured integration with Indonesia. In 1975 the East Timorese party political world was a very small one. Leaders of the parties knew each other well and were sometimes related, they usually had a privileged background – either coming from a *liurai* family or mixed race family, had landholdings, and an education and often experience in the public service. Given no history of Western-style political participation, membership of a particular party tended to be based on localised affiliations rather than ideological considerations (CAVR 2005: Part III, 26). People were often compelled to carry and produce party identity cards with violence ensuing if the wrong cards were provided, with party campaigning akin to a battle over physical as well as human territory (CAVR 2005: Part III, 29).

During this time Indonesia increased its intelligence and destabilisation activities in Portuguese Timor, which included disinformation campaigns broadcast from Kupang. It was also involved in training APODETI forces in West Timor. This added to the tension between political parties and fuelled a pervasive suspicion (CAVR 2005: Part III, 33).

All the political parties rapidly developed martial wings which included competing for support amongst the East Timorese members of the Portuguese colonial army (CAVR 2005: Part III, 26). Nicolau Lobato was given responsibility for developing the martial wing of ASDT, which he organised to be personally loyal to him rather than to the party (Nicol 1978: 101). Nicol notes that the People's Security Organisation, as it was called, had "activities including organising Timorese warriors to use strong-arm tactics on some people who were not doing what Fretilin wanted" (1978: 101). All political parties proceeded to use martial force in order to try and gain political control (Nixon 2008: 148-149).

A short-lived coalition between UDT and ASDT broke down and tensions escalated until UDT launched a coordinated attack on 11 August 1975 throughout Portuguese Timor. Political parties proceeded to compete to control and enlist support of the Portuguese police and military. UDT quickly captured the police headquarters, along with its commander and its stock of weapons and other key installations. While detaining the Portuguese police chief, UDT managed to win his support together with many of the East Timorese police serving under him, as well as parts of the military. FRETILIN demanded that the Portuguese administration disarm UDT and make East Timorese soldiers, rather than the police, responsible for security. The Portuguese sent Rogerio Lobato, one of the highest ranking East Timorese in the Portuguese military, for discussions with FRETILIN but instead this resulted in the majority of the East Timorese soldiers deciding to support FRETILIN. On 20 August FRETILIN launched their counter-coup by taking control of the army headquarters in Taibessi and detaining the Portuguese troops (CAVR 2005: Part III p 42). This action was co-led by Rogerio Lobato and Hermenegildo Alves, a pro-FRETILIN soldier (Jolliffe 1978: 132-133; Nixon 2008: 125). In the battles that ensued weapons were handed out indiscriminately by all sides and political parties allied with each other in every possible combination (CAVR 2005: Part III, 42).

During this time shifting alliances were displayed both by the members of the police and military and by the political parties. Additionally conflicts that erupted in the districts saw long-standing grievances about other matters fuelled by party-based divisions. It has been estimated that between 1 500 and 3 000 people were killed, both by UDT and FRETILIN supporters, during this conflict, which came to be known as 'the civil war' or simply '74-75' (CAVR 2005: Part III, 42). The CAVR report notes that "East Timorese, and some Portuguese, members of the military and police did not stand outside this conflict". Both FRETILIN and UDT took and killed prisoners during this time (CAVR 2005: Part III, 43).

The Portuguese administration, unable to exert control over the conflict, withdrew to the island of Atauro in the early hours of 27 August 1975 (Jolliffe 1978: 140). UDT withdrew initially to the airport, ultimately crossing the border into West Timor in early September 1975. UDT members and their allies from other small parties were placed under increasing, and eventually successful, pressure from Indonesia to sign a request for the integration of Portuguese Timor with Indonesia (CAVR 2005: Part III, 43-44).

In this section I have briefly examined the influence of the Portuguese administrative regime in Timor from 1926 onwards, a period that can be characterised as authoritarian and militarised, with limited opportunities for genuine Timorese participation in the

Portuguese administration. It appears colonial police had a paramilitary orientation, a model that was later repeated during Indonesian occupation and one that still has some support in post-independence East Timor. I have also discussed the events of the 1974-75 internal armed conflict in East Timor. This conflict was particularly violent and atrocities were frequent, leaving a legacy of division and trauma on the Timorese political leadership, something frequently attested to in evidence given to the CAVR. The struggles of nascent Timorese political parties, described above, to gain the support of Portuguese colonial police and military forces, as well as their personnel and resources, have contributed to a situation where political parties and factions place high importance on gaining control, sometimes by force, of the post-independence uniformed forces and their weapons. It has also meant that many Timorese, including members of the political leadership, are doubtful about the possibility of impartial security sector institutions.

Similarly, in 1974-75 the way that the martial wings of the new political parties tended to be controlled by individuals has resonances with both the earlier *liurai*-controlled armies and the way that figures such as Rogerio Lobato developed special forces within the PNTL that were personally loyal to him. It is also evident in the way that units of both the PNTL and the F-FDTL are seen as being 'owned' either by their Commander or in some cases one of the political leadership, rather than being part of a unified institution. This is discussed further in chapter 5 and 6. The legacy of 1974-75 has also resulted in a particular aversion by much of the political leadership to 'opening up' discussion of conflicts, as to do so is seen as opening a 'Pandora's box' of unresolved and still labile conflicts.³² It has arguably also resulted in failures to investigate or prosecute crimes associated with the 1999 or 2006 conflicts. This is discussed further in chapter 4.

2.4 Indonesian occupation

The Indonesian invasion of East Timor commenced as a covert campaign with border incursions from West Timor. Following the declaration of independence by FRETILIN on 28 November 1975 Indonesia launched a simultaneous air, sea and land invasion less than two weeks later on 7 December. Encountering far greater resistance than anticipated, Indonesia conducted extensive military operations in East Timor, including aerial

³² The anxiety present around discussing the events of 1974-75 was evident in the delays to the CAVR hearings on the internal conflict. On the day that the public hearings commenced in December 2003 I returned to my office late morning to discover all staff had stopped work to watch the event televised on national television, such was the level of interest in what people would say. One of the international staff involved in the hearing at the time commented to me that they felt there had been inadequate preparation of the Timorese leadership when compared with the preparation afforded senior members of the ANC in South Africa before they testified to their Truth and Reconciliation Commission, something that they believed was contributing to anxiety about the event.

bombardment and the use of forcible resettlement and internment in order to better manage non-compliant parts of the population. By 1980 it was estimated that over a third of the pre-invasion population of 700 000 had died from widespread famine, disease and to a lesser extent through military operations.

Understanding the effect of the occupation in East Timor hinges on understanding the pervasive power of the Indonesian military in every day life. Although the occupation was also administered by civilian government and the police, their role was largely determined by, and subordinate to, the military. From the assumption of power by President Suharto in Indonesia in 1965, the New Order was characterised by an expansion of military power into all aspects of government and the economy, with an attendant marginalisation of civilian authority. Robinson (2003: 15) describes the accompanying preoccupation with national unity, security and the controlling of dissent. He explains that the Indonesian military, from its inception, was obsessive about internal security. This was manifest in its doctrine of 'total people's defence' which involved the extensive use of covert operations and militias under military direction to ensure control of the population.

The Indonesian armed forces (ABRI – *Angkatan Bersenjata Republik Indonesia*) were founded on 5 October 1945. The Indonesian police (POLRI – *Polisi Republik Indonesia*) was founded in the same year. In 1959 POLRI was put under the coordination of the Minister of Defence, and in 1961 President Sukarno declared the police a branch of the armed forces. They remained under Presidential control until 1967 when the police were merged into the armed forces, albeit as a junior partner (Lowry 1996: 82; Kingsbury 2003: 134). In April 1999 ABRI was divided into separate commands – the military (TNI) and the police (POLRI). Whether in its ABRI or TNI incarnation, the Indonesian military was the most powerful institution in Indonesia and initially saw only cosmetic diminution of its power following the fall of Suharto in May 1998. From its inception it was an intensely political organisation and cannot be regarded as being under civilian control. Rather, ABRI saw itself as the progenitor of the Indonesian state, due to its role in the war of independence against the Dutch between 1945 and 1949 (Vatikiotis 2004: 29-30).

Both the structure and mode of operation of the Indonesian military was transported to East Timor upon invasion. Jolliffe details how the Indonesian landing parties arriving in Timor in December 1975 brought with them a range of torture equipment, based no doubt on its standard use against dissent in Indonesia (Jolliffe 2008: 11). The Indonesian military was arranged through a structure of 'territorial military command' which saw TNI forces

present and shadowing Indonesian civilian officials all the way down to the village level (Robinson 2003: 27):

The Korem Commander shadowed the Governor; the 13 Kodim Commanders looked over the shoulders of the 13 District Heads (Bupati); the 62 Koramil Commanders supervised the 62 SubDistrict Heads (Camat); and the 442 Babinsas operated alongside an equal number of Village Heads (Kepala Desa). In this way, the territorial military command effectively ensured military involvement in, and dominance over, the formulation and implementation of policy at every level. Thus, even if civilian authorities such as the Governor and the Bupatis were formally in charge, in the final analysis military officers within the territorial command exercised greater power (Robinson 2003: 27).

In addition to the everyday territorial command presence, extensive operations were undertaken against separatist activists. Special powers were conferred on the agencies Kopkamtib and Bakorstanas³³ and military personnel were seconded to most government agencies and departments. In these positions they performed a pervasive intelligence role, as well as ensuring that the military had priority access to available contracts and payoffs (International Crisis Group 2004: 3).

In addition to shadowing civilian officials with military ones, Indonesian authorities ensured civilian administration compliance at the local level. The authorities used a variety of mechanisms to establish control including direct appointment of pro-Indonesian Timorese officials and 'democratic election'. In the case of democratic election Timorese people often found a way to select the 'right' person after all, i.e. one who originated from a political authority-holding 'royal' House, in the same way that they did during the Portuguese era. When the 'wrong' people ended up in positions they could be ritually legitimised, given a proxy authority to rule, or attempts would be made to trace their royal ancestry. It appears that as a last resort they could be considered 'transitional' (Hohe 2002a: 575-579). Although many East Timorese eventually occupied the more visible positions of *bupati* and *camat* in the districts, they did not generally achieve senior positions in the civil service. These positions were usually held by immigrants from other parts of Indonesia. Consequently experience gained in public administration was minimal. Nixon argues that not only did this result in insufficient administrative capacity once independence was achieved, it also led to a lack of development of a sense of state legitimacy more broadly and simultaneously reinforced prevailing traditional authorities (Nixon 2008: 183-184).

³³ Neither Kopkamtib (Command for the Restoration of Security and Order) nor Bakorstanas (National Stability Coordinating Agency) are any longer in existence.

Although Indonesian nationalist rhetoric regarding the importance of development also applied to the province of East Timor, development initiatives were often frustrated by the tightly controlled internal security environment. The expansion of provision of basic education and junior secondary schooling between 1976 and 1997 was significant when compared with the Portuguese era. Nixon uses the 1995 Indonesian intercensal survey to illustrate how East Timor continued to rate poorly, when compared with other Indonesian provinces, on a range of development indicators. At this time only 49% of people were literate and nearly 70% of over-tens had either never attended school or not yet completed primary school. Similarly tertiary education was marked by a lack of resources, poor quality and low completion rates (Nixon 2008: 174-180).

In a surprise announcement in January 1999 President Habibie outlined the process for a referendum in the Province of East Timor that would determine whether East Timor would opt for autonomy within the unitary state of Indonesia or not. According to the 5 May agreements between Indonesia, Portugal and the UN, POLRI was solely responsible for the maintenance of law and order during the process of the referendum (United Nations 1999i: Art. 3). The Indonesian authorities did not comply with their responsibilities, with POLRI repeatedly failing to respond to militia violence. Indeed they would not only ignore but facilitate attacks by militia. Based on field observations during this period, Robinson argues that with the militias backed by the TNI, and the POLRI under political and operational command of the TNI, there was little prospect of POLRI seeking to control the militias. Robinson further concludes that this inaction and violence brokering was not only a matter of the POLRI knowing their place but was also a matter of 'policy' designed at least at the provincial (*Polda*) level and in some cases as far away as Jakarta. He argues that the rather more sporadic and direct violence committed by Brimob members³⁴ can be attributed to an institutional culture shared between Brimob and the TNI (Robinson 2002: 263-265).

East Timorese militia trained by Indonesia were used extensively to create fear and distrust. They were also used to create a fiction that the violence in East Timor was merely a civil

³⁴ Brimob is an abbreviation of 'Brigade Mobil' or Mobile Brigade. It is the 'anti-riot' branch of the Indonesian National Police which deals with special operations. It is a paramilitary organisation that conventionally operates under a Joint military command in places such as Papua, until 2005 in Aceh and until 1999 in East Timor. Brimob's training and equipment is almost identical to that of TNI. During the Indonesian occupation of East Timor, large numbers of Brimob were deployed and are known to have carried out indiscriminate killings, house burnings, and torture (ETAN 2008).

war between quarrelsome Timorese, rather than something designed and implemented by Indonesian forces.

During the lead up to the referendum on 30 August 1999 and after the announcement of its results, Indonesian military, police and pro-Indonesian local militia went on an orchestrated rampage through the length and breadth of East Timor. In a period of a few weeks the population of East Timor experienced widespread killing, looting, and destruction of housing stock and critical infrastructure. It also resulted in the temporary displacement of 400 000 people (Robinson 2009: 1).

2.5 The resistance at home and abroad

It was not only the conduct of the Indonesian occupation that influenced future developments in East Timor. The way that the Timorese armed and clandestine resistance organised itself during the Indonesian occupation, both within East Timor and in exile, also had implications for longer term security sector development.

The threat of Indonesian invasion of Portuguese Timor was present for several months before it actually occurred. While FRETILIN was planning its coup against UDT, Falintil was established on 20 August 1975 with Rogerio Lobato as Commander (CAVR 2005: Part V, 7). Following the withdrawal of UDT to West Timor and the Portuguese administration to Atauro (CAVR 2005: Part III, 44), FRETILIN established an interim administration while continuing to recognise Portuguese sovereignty and repeatedly requesting them to return and complete the decolonisation process. These requests continued as Indonesian incursions escalated. The FRETILIN interim administration is credited with organising food distributions and maintaining order, but there were also instances of forced labour, torture and execution. During this time they held up to 2 000 prisoners, but reports from independent sources indicate prisoners were well treated (CAVR 2005: Part III, 46-51).

As Indonesian incursions increased and Portuguese authorities ignored requests to return, FRETILIN felt compelled to unilaterally declare independence on 28 November 1975. The following day the FRETILIN Central Committee appointed Francisco Xavier do Amaral as President, Rogerio Lobato as Minister of Defence, Mari Alkatiri as Minister of Economic and Political Affairs, and José Ramos-Horta as Minister of Foreign Relations and Information. In the lead up to the declaration FRETILIN had been fully aware of the likelihood of Indonesian invasion and had begun to store arms and food, and Falintil had begun to equip and train militia (CAVR 2005: Part III, 53-55). Once Indonesia invaded

there were many arbitrary as well as targeted killings of East Timorese, many ABRI members also lost their lives (CAVR 2005: Part III, 62).

The governance of the resistance took place in adverse circumstances and addressed itself to improving agricultural production, health and education for the community as well as providing support to Falintil. During the resistance FRETILIN also created a justice system that included a restorative aspect involving 'self criticism' for more minor infractions which would attract 'corrective justice' such as gathering firewood and carrying water. The justice system also included a retributive aspect for more serious crimes, with FRETILIN Military commanders laying charges and a crowd deciding guilt or innocence through a 'popular justice' process. Punishments ranged from death to 'rehabilitation' in a *Renal* or *Reabilitação Nacional* which could either be an enclosure above ground or a hole in the ground covered with wooden bars or panels. Evidence was provided to CAVR of the mistreatment and trauma associated with some of these more authoritarian modes of FRETILIN's administration of justice (CAVR 2005: Part V, 12).³⁵

The structures of the resistance underwent continuous and contested development determined both by the exigencies of war and through differences of ideology and strategy. An extensive account of the different stages and composition of the military and clandestine resistance is provided in Part V of the *Chega!* Report (CAVR 2005). In 1981 Xanana Gusmão was transformed from being a junior Falintil commander without significant profile to Commander in Chief. Recognising the limitations of a struggle allied purely to one political party, Xanana was instrumental in brokering a temporary ceasefire with the Indonesian army that enabled him to travel for about six months in 1983, campaigning for a national unity approach to resistance. This was a controversial move, opposed by many in Falintil and in FRETILIN. It culminated in 1987 in the severing of the connection between Falintil and FRETILIN, with Falintil becoming the armed wing of the National Council of *Maubere* Resistance (*Conselho Nacional da Resistência Maubere*, or CNRM), a newly created umbrella resistance group. Extreme distrust between Xanana, some of the former Falintil commanders who are still politically significant, and some members of FRETILIN dates back to this time. These enmities manifest in contemporary personalised struggles regarding who will exert control over the armed forces and the police as well as questions of perceived legitimacy (Rees 2004a: 37-44). These processes left traumatic legacies and divisions. It is arguable that the necessity of secrecy and on some occasions the

³⁵ Rees (2004b) also mentions FRETILIN's propensity for 'rehabilitation' in relation to Rogerio Lobato's incarceration in prison in Angola, for offences described below. He was reputedly visited in prison by Roque Rodrigues who read him Marxist treatises to facilitate his rehabilitation.

necessity for people to work as 'double agents' both for the Indonesian occupation and the resistance has also left a deep legacy of suspicion.

Although the militarised and authoritarian aspects of Indonesian government reached down to the village level, its effective reach was attenuated by a parallel clandestine resistance network known as *nucleos resistencia popular* or *nurep*. The leadership of the *nurep* shadowed the village head or *kepala desa*, coordinated the *selular comunicação* (*selcom*) or village level clandestine network, and reported upwards to the district and subdistrict level. Significant traces of these organisational structures are still evident at a localised level in East Timor (McWilliam 2008: 132-133).

In addition to those members of the resistance and the clandestine movement that were active within East Timor during the Indonesian occupation, there were also significant numbers of the political leadership who spent time in exile in Australia, Portugal and the former Portuguese colonies of Angola, Mozambique, Macau and Guinea-Bissau. Rogerio Lobato, José Ramos-Horta and Mari Alkatiri left East Timor to seek international support on 4 December 1975, three days ahead of the Indonesian invasion, and remained in exile for the entire period of the occupation (Scott 2005: 25-27). Their experiences in their places of exile, and the way that their relationships were conducted, continues to influence the contemporary political landscape in East Timor. Of note is the role that Rogerio Lobato, former Minister of Defence in 1975 and future Minister of the Interior in East Timor, played during this time. His capacity for erratic behaviour was demonstrated as early as 1978 when he took members of the East Timorese resistance including José Ramos-Horta, Mari Alkatiri and Ana Pessoa hostage in Maputo for an extended period of time, thought to be weeks or months, before Ramos-Horta was able to finally convince Mozambican authorities to intervene. Lobato is believed to have spent time with the Khmer Rouge in Cambodia (Rees 2004b) and was later sentenced to prison in 1983 for several years in Angola for diamond-smuggling, abusing Angolan diplomatic privileges and procuring prostitutes (Shoesmith 2003:238 ; Rees 2004b).

A further consequence of having a resistance that was situated both within East Timor and abroad is a socio-political fault line, dependent on where people spent the occupation.³⁶ Many of those exiled abroad benefitted from educational opportunities that were not available within East Timor and became proficient in the Portuguese instead of the

³⁶ Evidence of these divisions is found in derogatory references to the 'Maputo clique' which includes people such as Mari Alkatiri and Ana Pessoa. Alkatiri, on the other hand, referred to Indonesian-educated graduates as '*sarjana supermi*' or 'instant noodle scholars' (International Crisis Group 2007: 1, n3).

Indonesian language.³⁷ This affects contemporary participation in all aspects of government.

2.6 Legacies of history

The idea that the political and social form and practices of a nation are influenced by what has occurred in its history is not new. However, using legacies as a conceptual framework, particularly in relation to violent and chaotic pasts, has been criticised. Multiple, accreting layers of history make causation difficult to 'prove'. Cesarini and Hite (2004: 324) caution against overstretching the idea of legacies in a way that is vague or generalised. Colombijn and Lindblad (2002: 9) advise prudence in the search for historical roots, warning of the danger of descending into cultural determinism; a similar theme is taken up by Steedly (1999: 445) advising against 'primordialising' the construction of violence in Southeast Asia.

A renewal of interest in the way that the legacies of the past play out in post-authoritarian regimes has been analysed through a number of case studies as well as the development of more general conceptual frameworks (Hite and Cesarini 2004). Similarly, conflict analyses use multidisciplinary approaches that encompass history, anthropology, psychology and theories of a path-dependence to search for the 'roots' of conflict, which in some cases may be obscured by the passage of time. This is apparent in Colombijn and Lindblad's (2002) edited volume on the roots of violence in Indonesia and Judith Bennett's (2002) paper on the roots of conflict in the Solomon Islands.

In relation to authoritarian legacies, Cesarini and Hite (2004: 2) note that some authors argue for only examining the immediately preceding regime when seeking explanations for contemporary manifestations, as incorporating the distant past can be too unwieldy and imprecise. Others are more comfortable taking a longer view, such as Henk Schulte Nordholt who argues for a 'genealogy of violence', or Robinson who, in relation to East Timor, proposes the notion of 'reservoirs of violence' and, in another context examines both the colonial and pre-colonial past for clues as to the character of the militias of 1999 (Schulte Nordholt 2002; Robinson 2002, 2006).

Henk Schulte Nordholt contends that

³⁷ The promotion of Portuguese language often took on an absurdist feel such as when former Vice Minister of Justice Manual Abrantes addressed a border meeting of the residents of Oecussi and neighbouring Indonesian Nusa Tenggara Timur in 2004. Although Abrantes spoke fluent Indonesian and none of the meeting attendees spoke Portuguese he lectured the group at length in highly 'Portuguese styled' Tetum that most Tetum speakers were unable to comprehend. He would correct the interpreting to Indonesian in English, further confusing the situation and amusing the Indonesian officials in attendance. Pers. Comm. Ingvar Anda 15 June 2009.

In general, post-colonial states have inherited more from their predecessors than their nationalist rhetoric would suggest. As such they retain an intense distrust towards their own subjects, as well as a strong concentration of power in the centre because of the fear that the delegation of power could lead to disloyalty and separatism (Schulte Nordholt 2002:42).

Similarly, Hills argues:

Despite what donors would wish, order depends on what went before. In other words order is a reconfigured complex of interlocking structures, processes and relationships that are composed of old elements and habits, only some of which will be revised and reoriented by new pressures and new or modified contexts. It depends on rules, behaviour and predictability, and is managed by coercion, adaptation, accommodation and negotiation (Hills 2009a: 203-204).

In a prescient analysis George Aditjondro, an Indonesian sociologist, speaks of the potential for Indonesian state terror to be reproduced in a [at the time of writing] future independent East Timor by East Timorese police, noting the number of studies that illustrate the way in which practices of torture and its effects ‘infect’ post-revolutionary societies (Aditjondro 2000: 160).

To the extent possible in this chapter, I follow an analysis that includes the longer view of the influences of history on the local context within which contemporary security sector building and reform occurs in East Timor. The discussion below is not however an exhaustive survey of the inchoate legacies of East Timorese history that shape the development of the security sector.

2.6.1 Limited penetration of the state and enduring local dispute resolution

There are a number of demographic factors in contemporary East Timor that affect the issue of the development of the state, the extent of its penetration, how the state operates at the periphery, and ultimately the development of a national police force. East Timor is ranked 162 in the Human Development Index (UNDP 2009b), has a very high birth rate and a very young population with the problems associated with a ‘youth bulge’ in developing countries. The largest employment sector is in subsistence agriculture and this contributes to the population retaining a highly localised sense of identity. This identity is also underwritten by the large number of languages spoken in Timor. Tetum and Portuguese are the official languages and thus they are what the central Government uses to communicate with the population. However, in some subdistricts less than twenty percent of the population can speak, read or write Tetum, similarly in other districts less than five percent can speak, read or write Portuguese. The 2004 census in East Timor found that 54.2 per cent of the population was illiterate. This is not evenly distributed

throughout the country, but even within Dili district 25.8 per cent of the population is illiterate. This is more prevalent in rural areas, reaching 71.1 per cent in Ermera. Thirty three point eight per cent (33.8%) have graduated from high school in Dili, down to four point three per cent (4.3 %) in Bobonaro (National Statistics Directorate 2006).

During the Indonesian occupation the state and its military supervision were present down to the village level. Unlike the countries of Melanesia, where it has been argued that the state was never properly built or functioning in the first place (Dinnen 2003: 6), East Timor experienced a strong state under Indonesian occupation. However the legitimacy of the state, in particular its policing and judicial functions, was limited amongst the Timorese population and broad development outcomes were poor. In relation to everyday maintenance of law and order and dispute resolution traditional authority structures retained supremacy for most Timorese, reinforced by strongly localised identities.

The extensive destruction of physical infrastructure and the withdrawal of higher echelon Indonesian public servants in 1999 provided a particular challenge for establishing a tangible reach of the new state. Both the UNTAET interregnum and the subsequent independent state were highly centralised, the civil service was only one third of that present during Indonesian times and the administrative experience and education of the civil service was low. District administrations found it hard to successfully access state resources.³⁸ The functioning of policing and judicial services was somewhere between poor and non-existent. The state in East Timor, at any distance from the centre, became highly dependent on the enduring function of traditional authority structures. This meant that the state at a district level was not exactly absent but looked somewhat different, a point made more generally by Das and Poole (2004: 3). People had negative experiences of the state during occupation and the penetration of the state form post-independence is limited.

It should not however be thought that the state is entirely 'absent' but rather that it functions in a somewhat different manner to that intended at the centre of government, with a distinct syncretism between old and new forms of authority in evidence. Post-independence, higher level governmental positions, as in previous eras, are more likely to be held by traditional authority holders. Hohe contends that although former Falintil fighters continue to be honoured for their resistance era contributions they are not as likely

³⁸ Much of my time as a Planning and Coordination Officer in Oecussi in the last five months of the UNTAET mission was spent trying to assist the District Administration to extract resources or funds already promised to them from Dili. My contact with members of the Oecussi District Administration after 20 May 2002 made it clear that this situation did not readily improve under sovereign administration.

to become political leaders as those from royal households. This indicates an important continuity and integrity of the pre-existing authority systems (Hohe 2002a: 575-578).

In relation to Oecussi both Meitzner Yoder (2005) and Nixon (2008: 331) detail how people holding traditional ritual and political positions will often also hold positions in the contemporary administrative structure. They also explain the way in which state and traditional dispute resolution processes overlap or are influenced by one another's authority. Post-independence there have been ongoing limitations to the devolution of resources from the capital to the districts, with attendant diminution of the authority of district officials. This factor serves to increase the reliance of state-based authority holders on traditional authorities for legitimacy.

In addition to a limited penetration of the state, people in East Timor have no particular experience of anything resembling a Western model of policing. Surveys indicating people's belief that community and traditional leaders, rather than the police, are responsible for law and order will be discussed in chapter 3. The limited capacity and reach of the East Timorese judicial system currently means that most dispute resolution can only happen through non-formal mechanisms. Mearns notes that

People are keenly aware that the government cannot yet solve most of their problems but they also know that a distant government of Dili based politicians is unlikely ever to understand the importance of their local concerns or be able to resolve them in a timely manner. There was a general feeling among the local people outside the capital that the village system of justice remained and would remain the most immediate, relevant and effective form of resolving disputes and punishing petty crimes (Mearns 2002: 40).

This would seem to support Dauvergne's (1998: 4) contention that in reality people expect little of the state. However, the ways in which people understand the relationship between the formal and localised systems of justice, and to where they will turn to seek access to justice is fluid, and subject to change. Although local systems have many shortcomings, they remain the choice and reality for the greater part of the population. While significant efforts have been expended on building rule of law institutions such as courts and police in East Timor, a rule of law culture remains elusive. This is discussed in chapter 4.

2.6.2 Martial heritage and unstable alliances

In Western countries Weber's (1991: 48) concept that a state is actually defined by having a monopoly on the (legitimate) control of violence is widely accepted. Throughout East Timor's history, however, this kind of monopoly on violence has not been evident, instead

an accompanying martial heritage with unstable alliances has historical continuities to the present day.

The pre-colonial island of Timor was characterised as a fragile patchwork of warring micro-kingdoms, with a constantly shifting dynamic of alliances between the *liurais* or rulers of the kingdoms. The pre-existing Timorese martial heritage was exploited until the end of the colonial period by the Portuguese in order to consolidate their authority, but in the process the practice also served to consolidate and extend the Timorese warrior tradition. The bestowal of Portuguese military ranks on Timorese warriors, discussed above, was part of this process (Nixon 2008: 81). Nixon also draws on the work of Farram to argue that

Portuguese encouragement of the Timorese martial heritage ensured that an association between the ability to command an armed force and the ability to advance one's political fortune remained current through to the very conclusion of the Portuguese period (Nixon 2008: 81).

Similarly, in Indonesia it has been noted that "violence has never been a legitimate monopoly of the state in twentieth century Indonesia" (Anderson 2001: 18). There is also a long-standing tradition in Indonesia of the state utilising and fostering paramilitary, vigilante, criminal and militia groups (Colombijn and Lindblad 2002: 19-20; Robinson 2006; Wilson 2006: 265). Wilson (2006: 265) argues that this has occurred in such a way as to blur the line between 'legitimate' and 'illegitimate' use of violence, noting that the Indonesian military itself was drawn from such organisations. The New Order regime often utilised criminal and paramilitary groups as proxies as part of a strategy of political control such as in the anti-communist pogroms of 1965 when they utilised 'private' youth groups to carry out intimidation and killings (Anderson 2001: 13).

The long history of using auxiliaries or militias in Indonesia continued in East Timor following the Indonesian occupation (Robinson 2006: 269). Robinson notes that the militias that were in evidence from late 1998 in East Timor were "mobilised, trained, supplied and backed" by Indonesian military, police and civilian authorities with a special catalysing role often attributed to General Prabowo Subianto, the son-in-law of former President Suharto (Robinson 2006: 272-274).³⁹ Robinson contends that the militias that were heavily supported as auxiliaries of the Indonesian army in 1999 were however not merely a creation of the Indonesian military but drew instead on identifiable models from both colonial and pre-colonial history in East Timor, as well as similarly recognisable models in Indonesia. He suggests:

³⁹ Prabowo Subianto was also an unsuccessful vice-presidential candidate in the 2009 Indonesian Presidential elections.

It seems possible that these features of the militias were not simply the product of a TNI plan but also the result of historical learning, and rekindled memory, through which a range of techniques of violence spread, albeit with official encouragement. In this view a certain script or historical memory, encompassing a shared repertoire of violence, might already have been in the minds of many East Timorese, ready to be enacted when the occasion arose, or when the signal was given by authorities (Robinson 2006: 274).

Robinson notes tactics employed by pro-Indonesian militias in 1999, such as bombarding enemies with a hail of rocks⁴⁰ and burning down their houses drew on old traditions of warfare. He does not, however, propose this as evidence for an immutable 'Timorese tradition' but rather argues that "the very existence of local auxiliaries, as well as their weaponry and behaviour, were shaped by the presence, and sponsorship, of Portuguese, Dutch and other outside powers" (Robinson 2006: 276).

In post-independence East Timor it is clear that the practice of using auxiliaries undermines any attempt to establish a state monopoly on the legitimate control of violence. During the 2007 presidential and parliamentary elections, gangs were used by political parties as violent proxies, with violence being turned on and off as required. Many gangs count even high-ranking police officers in their membership, providing a clear conflict of interest (Myrntinen 2007: 13; 2008; Scambary 2009a: 1).⁴¹ Although it is sometimes claimed that a particular gang is affiliated with a particular political party this tends to be opportunistic, with shifting patterns of alliances predominant.⁴² Further detail is provided in chapter 5 on the shifting alliances apparent in the conflicts that emerged in 2006 and 2007.

In the early days of the UNTAET administration and into independence a variety of non-state security groups emerged including the CPD-RDTL (Popular Council for the Defence of the Democratic Republic of East Timor), Colimau 2000, the Isolados and Sagrada Familia which were formed by disaffected veterans and members of the former clandestine movement. These groups provided a direct challenge to the formation of the new armed forces and, in the case of CPD-RDTL, to the government overall. Some were engaged directly in intimidation and violence. Others were reputed to maintain links to militia

⁴⁰ In personal discussions with Father Richard Daschbach, a long time priest in Timor, he has recounted how he and the local children of Cutete fought off the militias attempting to take their hilltop position in 1999 with spears, slingshots and rocks.

⁴¹ The high level of 'gang tattoos' amongst PNLT in Baucau was noted in discussion in July 2009 by a member of the Joint Field Assessment Team carrying out assessments of readiness for handover from UNPOL to PNLT.

⁴² Pers. Comm. James Scambary 5 March 2009

leaders in Indonesia and/or political figures in East Timor. Some of the groups utilised registration procedures and the issuing of identity cards reminiscent of the practices of the nascent Timorese political parties during the civil war.

In situations where penetration of the state is limited it allows the emergence of 'entrepreneurs in violence' (Schulte Nordholt 2002: 40). Such entrepreneurs of violence can exist either within or outside formal state structures or in a shadowy world in between. The former Minister of the Interior Rogerio Lobato is just such an entrepreneur. Later in this chapter I describe how he played a complex double-agent role: ostensibly representing the Portuguese military while martalling East Timorese members of the Portuguese military to support FRETILIN in 1975. In chapter 4 I describe how he used disgruntled veterans of the resistance to conjure up a threat of violence which resulted in his securing a formal role as Minister of the Interior. In this position he devised special police forces that were personally loyal to him rather than the state.⁴³ He was subsequently convicted of distributing weapons to civilians with the intention of eliminating leaders of opposing political parties and petitioners who had deserted the military.

Major Alfredo Reinado, head of the military police in East Timor until 2006, can similarly be considered an entrepreneur of violence and one who occupied a position informed by East Timor's martial heritage. Nixon argues that the pattern of shifting alliances that characterised the pre-pacification era of the Portuguese colonial period was still being played out in the defection of a Border Patrol Unit to join Reinado's gang during the crisis of 2006 (Nixon 2008: 289). Reinado was on the run for almost two years from prison, variously negotiating with, and being pursued by, agents of the state. During this time rumours spread that Reinado had been endowed with the supernatural powers of the late Dom Boaventura in a secret ritual ceremony. Dom Boaventura led the proto-nationalist Manufahi rebellion in 1911 and is considered in many parts of the country, more specifically in western districts, to be the archetypal Timorese warrior who among other things united previously divided *liurai* in revolt against the Portuguese (Sengstock 2008). It is arguable that Reinado had an overinflated sense of his own legacy, but nonetheless his use of the image of the warrior clearly has a contemporary cultural power in East Timor.

The occupation of a place located in between cultural belief and Western ideas of reality by former East Timorese resistance fighters was not unique to Reinado. In the burnt out ruins of public buildings throughout East Timor in 2000 I photographed a range of graffiti, with

⁴³ This has continuities with the actions of Rogerio's brother Nicolau Lobato who organised the martial wing of FRETILIN to be personally loyal to him rather than the party (Nicol 1978: 101-102).

charcoal depictions of the guerrilla Xanana Gusmão one of the most common. These depictions of Xanana were part Jesus Christ, part angel (complete with wings) and part Che Guevara. A sense of identity that draws a lineage from the fighters of the resistance to the earlier warrior kings is not infrequently made. Niner (2007: 113) notes that “many of East Timor’s resistance fighters against Indonesian occupation claimed descent from the warrior tradition of their ancestors by readopting their indigenous names and casting aside their colonial ones”. This highlights the lack of an institutional basis for the expression and control of violence and a seeming preference for much more personalised loyalties, something resonant with older cultural practices of headhunting and raiding.

It is empirically demonstrable that the East Timorese government has no Weberian monopoly over the control of violence. This is complicated further by the lack of clarity regarding the respective roles of the police and the military. This can be expressed in another way as there being no monopoly on policing. During most of the Indonesian occupation the POLRI were subsumed as part of ABRI. Previously, following WWII the Portuguese police were part of the military. This historical model of military over police may provide a clue as to why there is a contemporary affinity with this model, no doubt bolstered by the role that Falintil played in the resistance to Indonesian rule and a comfortable fit with narrative about Timor’s warrior tradition. The Timorese police do not have a similar story to draw upon. My research indicates a widespread belief that an impartial police force, although theoretically desirable, is not considered possible and that it is rather a matter of who controls the force and its resources.

2.6.3 Personalised exercise of power

In the earlier discussion of East Timor’s martial heritage, shifting alliances and lack of monopoly on the control of violence, a number of examples of how political leaders use their personal, rather than institutional, power were highlighted. This is one of the characteristics of the way that power is enacted, and governance conducted, in East Timor in the post-independence period and has consequences for the development of the security sector and similarly the rule of law. It should be noted, however, that frequently those occupying key roles in the independence movement and subsequent post-independence government were originally from high ranking *liurai* families. For example Nicolau and Rogerio Lobato’s father was the *liurai* of Leorama *suco* in Bazartete subdistrict in Liquica (Nixon 2008: 131). This means that leaders are often able to draw on their traditional sources of authority and the accompanying social capital such as educational and employment opportunities, as well as the resources that are inherent in a formal institutional position. The tendency, though, is to exercise that complex of power in a

personal rather than institutional fashion. This is evident in how problem-solving of major security issues is conducted, such as when Major Alfredo Reinado was on the run or following the dismissal of petitioning soldiers in 2006. This problem-solving is approached serially by various members of the political elite operating in an almost unofficial capacity, and with complete disregard for any legal or other formal processes that may also be underway. The newness of the state and its limited geographical and functional reach has left a much greater role for the personalised exercise of power in East Timor. However, this patrimonial approach has its antecedents within the patron-client relations of the autochthonous social organisation as outlined earlier in the chapter. Patrimonialism, and its neo-patrimonial manifestations, is of course not confined solely to East Timor. Brown notes that

communitarian norms of Southeast Asian cultures coexist with the personalization of political practice. Even in those countries where the forms of institutionalized democracy have become established, the patrimonial politics of patron-client linkages remain a central feature of political life. Patrimonial elites do indeed vary significantly in their responses to their clienteles, but in all variants, the politics of patrimonialism involve and promote inequalities of status (Brown 2002: 564).

The legacies of the highly personalised East Timorese approaches to power have resonances with, and arguably were bolstered by, Indonesian approaches to governance. In a general sense Suharto's rule during the New Order was characterised by webs of patronage that traversed business, civilian administration and the military, with elite competition more focused upon the division of spoils than matters of policy (Crouch 1979: 577-578). Gunn and Huang (2006: 123) cite legacies of Jakarta's occupation as including "nepotism, favouritism, corruption, and bureaucratic inertia". Similarly the functioning of the Indonesian bureaucracy has been described as operating through the phenomenon of *bapakism*, which Pye describes as

consisting of a father figure, the *bapak*, and a circle of loyal followers called *anak buah*, or children – is the cohesive glue which holds the most intimate groupings in the bureaucracy. The *bapak-anak buah* relationship is pervasive in giving structure to what is formally designated as bureaux or offices. It may also be a factor in linking together different principal figures along lines which may or may not follow the formal hierarchy of the bureaucracy (Pye 1985: 306).

Crouch has identified how these strongly patrimonial characteristics co-exist in Indonesia alongside more 'modern' or 'Western' non-patrimonial approaches (Crouch 1979: 587). A similar pattern can be said to occur in East Timor with Gunn and Huang drawing on the

notion of *bapakism* to coin the term *liurai-ism* to describe patron-client relationships in East Timor that may or may not involve actual *liurai* or *their descendants* (Gunn and Huang 2006: 123). Nixon also argues that the political party leaders who emerged in 1974 “would have understood the rationale of using personal armed forces for the pursuit of political objectives” drawing upon their own *liurai* heritage (Nixon 2008: 124). The point has also been made by Adérito de Jesus Soares that the prevailing ‘culture of command’ that developed during the resistance period is now a problematic characteristic of contemporary political life in East Timor (quoted in Chesterman 2007: 212).

During the course of this thesis I provide a number of examples of how this patrimonial legacy plays out in the development of both the police and the military in East Timor. Earlier in this chapter I describe how, in the early stages of the resistance to Indonesian occupation, Nicolau Lobato established the martial wing of FRETILIN in such a way as to be personally loyal to him rather than to the party. Similarly, in chapter 4 I examine how in the post-independence period the Minister of Interior Rogerio Lobato (brother of Nicolau) developed special forces within the PNTL who were considered to be at his personal behest. In chapter 6 I discuss how the Dili Task Force, a special unit formed within the PNTL, is considered to be ‘owned’ by the PNTL Dili District Commander.

However, not only does power tend to be exercised in a personalised rather than institutional form, it is also moulded by the histories of particular personal relationships of members of the political elite. In order to understand state and more generally elite dynamics it is important to appreciate that it is the history of the relationships of the specific members of the elite that is formative in the kind of security sector presently developing in East Timor and conflicts that have accompanied that process. In discussing the underlying causes of the 2006 crisis in Timor, the International Crisis Group notes that “the entire crisis, its origins and solutions, revolve around less than ten people, who have a shared history going back 30 years” (International Crisis Group 2006: i).

During November 2008 Dmitry Titov, Assistant Secretary-General of the UN Office of Rule of Law and Security Institutions, visited East Timor to assess the work of the rule of law and security sector components within UNMIT, as well as the cooperation and coordination between stakeholders in this sector. He concluded that future stability in East Timor was dependent on what he referred to as the “political chemistry” between President Ramos-Horta, Prime Minister Gusmão, Opposition Leader Mari Alkatiri and Brigadier-General Ruak (Titov 2008).

Although it is the historically constituted Dili-level political elite and their personal exercise of power that figure in many of the narratives regarding development of the security sector, it is equally important to remember that those elite also often draw on specialised localised constituencies depending on where they and their families come from. In any particular locale there will also be important power holders who are not known in the capital but will also carry significant weight at the level of localised security considerations.

2.6.4 Fault lines, suspicion, trauma and violence

East Timor's turbulent past has resulted in a number of fault lines present in the community. These tensions manifest as conflicts between particular groups and may flare up or become dormant again, depending on other prevailing factors. These conflicts inform debates about security in East Timor and are also threaded through some of the conflicts within and between the security forces, most notable in the crisis of 2006.

There are many different fault lines in East Timor, some with long antecedents. For example Scambary (2006: 2) notes ethnic divisions around market rivalries subsequent to migrations into Dili after WWII and again in 1999. Additional divisions date back to the 1975 civil war between FRETILIN and UDT, yet others relate to the resistance era splits. The 2006 crisis discussed in chapter 6 was marked by conflict between those from the east (*loro sa'e* or *firaku*) and those from the west (*loro monu* or *kaladi*).⁴⁴ There are divisions between those who spent the Indonesian occupation overseas and those who remained in country; similarly there are generational differences often marked by a preference for using Indonesian or Tetum over Portuguese.

During the life of a conflict the ostensible reasons for the conflict are often transformed. Myrntinen (2008) provides the example of long-standing land disputes in Baucau and Viqueque that are now construed as a division between AMP and FRETILIN. Similarly he notes that gang violence between rival gangs may have its origins in "longer-standing land issues, private issues or political conflicts, though some seem to be purely about group A fighting group B".

The UN Special Commission of Inquiry (CoI) into the crisis of 2006 noted that "political competition within East Timor has been historically settled through violence" (United Nations 2006a: 16), and there is no doubt that Timor has been subject to a violent history.

⁴⁴ The East/West division is variously regarded as a phenomenon that emerged of its own accord in 2006, as representing a belief by easterners that they were the ones who suffered the most under Indonesian occupation (whereas westerners benefitted from or were collaborators with the Indonesians), and as the result of a divide and rule strategy of the Portuguese colonial era. This is discussed further in chapter 6.

The Indonesian occupation was a brutal experience for the majority of East Timorese. However, what Robinson refers to as reservoirs of violence are more complex and of earlier antecedents than just the legacies produced by the Indonesian military.

Earlier in this chapter I noted the concept of a genealogy of violence in relation to Indonesia. Some of Timor's family tree of violence shares the same roots as Indonesia's; it also reflects the Portuguese colonising experience and aspects are distinctly home-grown. It has been argued that reservoirs of violence occur in Southeast Asian conflicts more broadly, persisting across times of relative peace. This is evidenced by continuities in modes of organisation, use of weapons and repertoires of violence of colonial militias in East Timor from the Portuguese period to independence (Hack 2004: 20; Robinson 2006). In her study on enduring violence in East Timor, Dewhurst concludes that

violence is broadly accepted in the home; at school; in response to major and minor disputes; in revenge for past offences; as a means of upholding the status, values, property or reputations of families, communities or gangs;[sic] or individuals' status within these groups. Violent actions are also normalized as part of the political landscape in the country and are used to gain influence, power, or respect (Dewhurst 2008: 89).

She argues that a 'culture of violence' as described by Steenkamp (2005), in large part derived from prolonged exposure to the violence of occupation, exists in East Timor. It includes a societal permissiveness to violence and this is influential in "the perpetuation of individual, collective, and state-level violence which has occurred during the independence era in Timor-Leste" (Dewhurst 2008:89). She cautions however, that a culture of violence is only one of a web of factors that contribute to the *causation* of violence (2008: 89-91).

Whatever the historical propensity for violence, the levels of trauma experienced by the population during the civil war, the Indonesian occupation and in ongoing multifaceted post-independence conflicts are significant. A randomised study carried out in East Timor in 2000 by the International Rehabilitation Council for Torture Victims (IRCT) found that thirty four percent of respondents could be classified as having post-traumatic stress disorder (PTSD) and fifty seven percent had experienced at least one of the six forms of torture included in IRCT's study instrument (IRCT 2000). Jolliffe (2008: 10) argues that "sustainable democracy will remain a distant goal, with unrest and civil strife continuing to haunt the new nation, until the important factor of untreated and widespread psychosocial trauma is addressed". The historical contours of violence in East Timor continue to manifest in people's perceptions of security and what expectations they have of their security forces.

2.7 Conclusion

In this chapter I have drawn out a number of related threads that are discernible as legacies from Timorese history. Demographic issues such as lack of education, lack of formal employment opportunities, a 'youth bulge' and a highly dispersed and primarily agrarian society contribute to the nature of Timorese society and its security sector today. I explore how the limited reach of the state has continued to provide a role for more traditional forms of governance and exertions of power that tend to be personal rather than institutional. The continuities of martial heritage, and a proclivity for formation of unstable political alliances, throughout Timorese history are still present in much of the instability that both forms and affects the modern security sector. A history of violence, much of it extreme, is associated with this martial heritage and has provided many of the traumatic legacies of violence that affect the majority of the population, manifesting both as individual and collective trauma.

The exercise of power in East Timor in a personalised rather than institutionalised manner has major implications for international police-builders who are operating primarily from the assumptions inherent in an institutionalist paradigm. The patrimonial nature of East Timorese society more generally, and the security forces more specifically, has meant that very few of the Timorese political elite consider that an impartial police force is a possibility, and that it is merely a matter of who owns which bits of it. It is arguable that contemporary distrust of PNTL by FRETILIN is underwritten not only by more recent clashes between PNTL and F-FDTL and the experience of Indonesian policing under the occupation but also by the siding of the Portuguese police (which included East Timorese) with UDT during the early stages of the civil war, something that resulted in FRETILIN demanding that East Timorese soldiers assume responsibility for security rather than the ill-trusted police.

Similarly, experience of the state and policing during both the Portuguese colonial era and the Indonesian occupation underpin contemporary expectations of the role and function of the police and confound international attempts to introduce more democratic and accountable policing styles. This is apparent both in the conduct and performance of the PNTL themselves as well as how the broader population, the political leadership and the military perceive the legitimacy of the PNTL. These expectations have a profound effect on the police-building endeavours of external parties such as the UN and other bilateral contributors.

Chapter 3

The building of a fragile institution 1999-2006

3.1. Introduction

This chapter traces the development of the PNTL from its creation in 2000 until the ‘crisis’ of early 2006, which included the collapse of the police force in Dili and at the national headquarters. It is an account of the early history of the institution’s development under UN and bilateral auspices and through the staged handover of districts and management to East Timor government control. It is also a story of institutional development within its historical, political, social and cultural context.

The chapter commences by examining the role of the UN in the development of a police service for East Timor. It provides an account of UN executive policing during the United Nations Transitional Administration in East Timor (UNTAET) mandate, and UN efforts to build a police force from scratch. The chapter also describes how, during the process of transferring policing responsibility from UNTAET to the independent East Timorese government, weaknesses in the structure and function of the police force started to become apparent. These weaknesses became more pronounced as the PNTL passed to East Timorese government control. It became apparent that the way the police force was developing was underwritten by a variety of East Timor’s historical experiences, including the conduct of policing by colonial and occupying forces and civil war- and resistance-era struggles over the control of armed force. Finally, it became clear that poorly functioning justice institutions, coupled with a poorly regarded police institution, reinforced a tendency to draw on older and more localised forms of dispute resolution. This often resulted in hybrid innovations, initiated by both international and Timorese actors, for addressing security and justice issues.

In this chapter I argue that both the manner of creation and the subsequent mode of development of the East Timor police force influenced the performance, legitimacy, and viability of the institution. I also argue that the technical failures in the development of the East Timorese police force were so manifest that they obscured the equally important question of the historical and cultural context in which international forces, bilateral agencies and an independent government were attempting to build a new institution. All these factors have affected the overall sustainability of the police force.

3.2 UN Policing

3.2.1 Anticipating a new police force

On 30 August 1999 a referendum was held for the territory of East Timor. The United Nations Mission in East Timor (UNAMET) had been mandated to

organize and conduct a popular consultation, scheduled for 8 August 1999,⁴⁵ on the basis of a direct, secret and universal ballot, in order to ascertain whether the East Timorese people accept the proposed constitutional framework providing for a special autonomy for East Timor within the unitary Republic of Indonesia or reject the proposed special autonomy for East Timor, leading to East Timor's separation from Indonesia (United Nations 1999f: 2)

By early August the UN Secretary-General (UNSG) foresaw that in the period between the referendum and the implementation of its result “the situation in East Timor will be rather delicate” (United Nations 1999f: 2). The scale of destruction and violence that followed the announcement of the results of the referendum on 4 September showed this to be an understatement (see e.g. Nevins 2002: 623-624).

Estimates of the number of people who lost their lives range from 1 200 to over 2 000 (Robinson 2003: 1; Nevins 2002: 623; Post-CAVR Secretariat and Benetech 2008). By 15 September 1999 UN Security Council Resolution 1264 (1999) had authorised the creation of a multinational force to restore peace and security. The Australian-led International Force for East Timor (INTERFET) force landed in Dili in East Timor on 20 September 1999 and was able to extend its influence as far as the enclave district of Oecussi by 22 October. At its peak INTERFET included 9 900 troops from 22 nations and civilian police who carried out monitoring and advisory duties (Australian Minister for Foreign Affairs 2000; Australian Government 2001; Bano and Rees 2002).

UNTAET assumed responsibility for the administration of East Timor on 25 October 1999. It was immediately placed in the unique position of having full legislative and executive powers, a form of sovereignty previously unknown in UN missions. UNTAET took over responsibility for security from INTERFET in February 2000, deploying both military and police. The circumstances were challenging and the capacity of the UN to meet those challenges was severely tested. The UNTAET mandate did not explicitly make reference to the requirement to develop a new police force but this was implicit in the full legislative and executive powers bestowed by the mandate.

⁴⁵ This date was later revised to 30 August 1999.

The development of a new East Timorese police force had been foreshadowed in the constitutional framework for the Special Autonomous Region of East Timor (SARET) in 'the 5 May agreements'.⁴⁶ Articles 32-35 of the Constitutional Framework of the SARET provided for the establishment of a SARET police force in the event that the autonomy option was accepted. It was agreed that, if autonomy was rejected, the government of Indonesia would take the constitutional steps to terminate its links with East Timor, and the governments of Indonesia and Portugal, together with the UN, would agree on a "peaceful and orderly transfer of authority in East Timor to the United Nations" (United Nations 1999a).

In either case a new police force was anticipated to replace the Indonesian POLRI. The UNSG, in outlining post-referendum scenarios, had foreseen that following the ballot it would be necessary to increase the UN police component from the 275 (UNAMET 1999) deployed in the lead up to the referendum to 460. This would enable the police to operate in all thirteen districts, and would also include a small team of about fifty personnel to recruit and train a new East Timorese police force (United Nations 1999f: 3). The Security Council made this expectation more explicit in Security Council Resolution 1262 on 27 August 1999 (three days before the referendum), when it extended the UNAMET mandate.⁴⁷

3.2.2 An executive policing role for the UN

Included within UNTAET's broad mandate to administer the territory was the explicit requirement to provide security and executive policing. The scale and breadth of UNTAET's task meant that a much larger police presence than initially anticipated was required, with the Security Council authorising a maximum 1 640 police.⁴⁸ Initially the UN had difficulty in deploying the numbers of CIVPOL required. Only four months previously the Security Council had established the United Nations Interim Administration in Kosovo (UNMIK), also including an executive policing function and with an explicit mandate to

⁴⁶ These agreements between the governments of Indonesia and Portugal authorised the referendum on special autonomy for East Timor within the Republic of Indonesia and requested the UNSG to establish a United Nations mission to carry out the referendum. The agreements also outlined the procedures to be followed in the event that the proposed autonomous status of East Timor was accepted, or in the alternative, rejected (United Nations 1999a).

⁴⁷ The Security Council Resolution states that the mission is extended "...until 30 November 1999, and endorses the proposal of the Secretary-General that in the interim phase UNAMET should incorporate the following components: (a) an electoral unit as set out in the report of the Secretary-General, (b) a civilian police component of up to 460 personnel to continue to advise the Indonesian police and to prepare for the recruitment and training of the new East Timorese police force (United Nations 1999f: 2)

⁴⁸ Security Council Resolution 1272 (1999).

establish a police force.⁴⁹ The particular nature of these two missions, while not entirely unprecedented, marked a new development in the demands on CIVPOL, which previously had been much more likely to be deployed in monitoring, training and reform of existing police forces. In relation to both UNTAET and UNMIK, the UNSG was regularly reporting difficulties in fulfilling the mandated deployment of civilian police.⁵⁰

In East Timor the slowness of recruitment of international police officers meant an initial inability to deploy many police officers outside Dili. Although by January 2000, when UNTAET assumed responsibility for law and order, 400 CIVPOL from twenty nine countries had been deployed in all 13 districts, the majority of these were in the district capitals (United Nations 2000c: 12). The lack of a full complement of CIVPOL meant that they needed to rely on INTERFET, and later the military peacekeepers (PKF), for back up. The international police shortage, and their lack of familiarity with local conditions, also resulted in a decision by CIVPOL to bolster their numbers by establishing a police assistance group (PAG) comprising East Timorese who had formerly served as part of POLRI. Ultimately many of these former Indonesian police were recruited into the new East Timor Police Service.⁵¹

As security had been normalised fairly quickly following the arrival of INTERFET, the initial preoccupations of CIVPOL were with a rising crime rate attributed to “the large numbers of unemployed and the re-emergence of longstanding conflicts within society” (United Nations 2000c: 4), and the safe return and processing of refugees. CIVPOL was also legally empowered to investigate the crimes against humanity that occurred during 1999 but were not trained in the specifics of this kind of investigation till late June 2000, tending to treat each case as homicide “with no attention to the role of the Indonesian state or to the links among the different crimes” (Human Rights Watch 2001: 191). Initially CIVPOL was unarmed, but on 30 April 2002 a serious fight between rival youth groups at Dili stadium spread to the nearby central market and resulted in four injured and eighteen arrests. Following this incident police were authorised to carry side arms (United Nations 2000b: 6). The PKF meanwhile were largely involved in a range of border incidents with militia (United Nations 2000c : 5-6, 14).

⁴⁹ Security Council Resolution 1244 (1999). What was referred to as a ‘police force’ in the original UNMIK Security Council resolution was, by the time of the first Report of the Secretary-General on the mission, being referred to as a “credible, professional and impartial Kosovo **Police Service**”[emphasis added](United Nations 1999a: 12).

⁵⁰ In relation to UNMIK see Security Council Resolution 177 (2000).

⁵¹ Similar pressures in Kosovo resulted in recruitment of significant numbers of former Kosovo police service officers who had been expelled from the force in 1989 and 1990 as well as ex-Kosovo Liberation Army (KLA) members (United Nations 1999e: 15).

As well as having trouble getting the numbers of CIVPOL required, there were significant problems with the quality of police recruited. The Commander of the Canadian CIVPOL contingent from May 2001 to March 2002, Inspector Rick Taylor, noted the lack of knowledge, skills, and abilities of civilian police officers from some contributing countries “in the area of police tactics, investigational techniques, major case management principles, processes, informant handling and analytical skills”. Some of those recruited were not even police. Many contributing nations sent personnel such as police car-washers, clerks, drivers, administration support and even a postal officer to work as police. Consequently they were unable to fulfil the policing role (Taylor 2003: 2; Goldsmith and Harris 2009: 197).⁵²

There was little accountability within the UN mission for the behaviour of individual CIVPOL officers. Taylor (2003: 3) claims that CIVPOL in East Timor was engaged in prostitution, the black market and the sale or purchase of contraband, and that some CIVPOL officers were mistreating local citizens with “verbal abuse and a condescending attitude in their daily interactions”. The problem of CIVPOL accountability was not confined to the UNTAET mission and has emerged as a major issue in other missions including in Bosnia, Cambodia, Kosovo and Democratic Republic of Congo (Call and Barnett 2000: 51; Murray 2002-3: 503-506; Murphy 2007: 230; Smith, Holt, and Durch 2007: x). Although UN military peacekeepers are provided immunity from local prosecution and remain under the exclusive criminal jurisdiction of their own national authorities, the situation with UN civilian personnel, including civilian police, is a little different. CIVPOL are provided with functional immunity if carrying out the performance of their duties. Anything that falls outside this definition becomes a matter for local prosecution. However, the frequent lack of a fully functioning judicial system in places where CIVPOL is likely to be working frustrates accountability and promotes impunity (The Partnership for Effective Peacekeeping 2004: 2).

During the UNTAET mission in East Timor, over forty nations contributed police personnel. Managing such a multinational force, with different backgrounds, policing styles and competencies, was a particular challenge.⁵³ There have been calls for UN policy requiring geographic balance within each peace operation to be reinterpreted as a balance

⁵² Goldsmith and Harris, in their interviews with Australian police who served as part of integrated missions in East Timor, also discuss the perception that a misreading of the situation in East Timor had resulted in some national contingents sending police who were not ‘appropriate’ for the situation, citing in particular the deployment of riot police when the mission was promoting a community policing ethos (Goldsmith and Harris 2009:197).

⁵³ See also Goldsmith and Harris (2009) for a discussion of cultural and operational issues affecting interoperability between different national contingents of UNPOL in East Timor.

across all peace operations, so that with any one peace operation recruitment would be of police from appropriate cultural or linguistic backgrounds to the mission country (King's College 2003: par. 82).⁵⁴

The operational capacity of CIVPOL was hampered by logistical problems due to lack of buildings, equipment and transport. This capacity was also hindered by the virtual absence of other pillars of rule of law architecture. The lack of a functioning judicial system and, in most areas, the lack of any detention facilities greatly affected the ability of the police to conduct their work. At one point during 2000 CIVPOL had to stop carrying out arrests as there was no where to place arrestees. The only detention centre in the country had exceeded capacity and the prison in Becora was not rehabilitated until May 2000 (Human Rights Watch 2001: 191).

The difficult operational environment combined with little direction from Dili meant that police in the districts developed a range of ad hoc mechanisms for carrying out their work. International police in the districts were not familiar with the Indonesian legal system and did not have English translations of the applicable laws. As a result they were observed to apply their own national legislation and criminal procedures (Human Rights Watch 2001: 191).

CIVPOL officers were also constrained by lack of understanding of local language and cultural issues, confusion about applicable law, and confusion about the meaning of community policing. The continued understaffing of CIVPOL below the authorised strength coupled with little direction from the top can in part explain the not insubstantial improvisation undertaken by international police.

Although from the beginning of the mission the UN held that a community policing model was being followed, no interpretation of what that might mean was provided to police on the ground. In 2000 the UNSG noted that “UNTAET follows a community-based approach to policing, participating in local problem solving meetings and other community activities. Traditional mechanisms of conflict resolution are commonly used” (United Nations 2000b: 7). In 2001 he continued on this theme, noting that

systems of traditional justice play an important role in preventing or settling minor crimes in districts through the establishment of a law and order

⁵⁴ Noting these difficulties, UNTAET undertook an experiment in 2001 in Baucau, East Timor's second largest city, with deploying a single nationality of police (from the Philippines), but it is unknown whether this process was ever evaluated.

committee composed of the head of the village, a priest, representatives of local organisations and a civilian police officer (United Nations 2001a: 5).

However, on the ground in East Timor there were up to forty different nationalities applying their own concepts of community policing with little direction, resulting in widely differing interpretations. Mobekk, who conducted interviews with CIVPOL officers in East Timor in 2001, found that police officers thought that it meant “anything from getting closer to the community to letting the community police themselves with limited involvement by the police force” (Mobekk 2005: 7). The great variety of ideas on what community policing might encompass made consistent implementation difficult and evaluation almost impossible.

Many people relied on informal systems of policing and justice during UN executive administration. This was a continuation of a long tradition of using non-state based policing and justice systems, but it also occurred within the context of a lack of capacity of the UN to provide formal systems. This also affected UNPOL and UNTAET officers in the districts who implemented a variety of short term innovations that harnessed cooperation between police and community leaders. This is discussed later in the chapter. Although a range of traditional mechanisms were relied upon by international police, informal security forces were used that were of more recent provenance. These included those set up by the *Conselho Nacional de Resistência Timorese* (CNRT) and Falintil. The lack of capacity of CIVPOL to carry out policing also extended to a lack of capacity to monitor or control these informal groups. Human Rights Watch provides accounts of one returning militia member in Liquica who was beaten and stabbed by an ‘investigation unit’ of CNRT; as well as another suspected militia member who was kicked to death in Tibar, near Dili, after being held in an illegal detention facility. Although the suspected perpetrators were taken into custody by CIVPOL the ‘screening’ process was allowed to continue. Similarly, there was no significant interference with Falintil’s detention and re-education camps (Human Rights Watch 2001). Many of the same difficulties experienced by CIVPOL in carrying out their executive policing function continued to be evident as they set about forming a new police force.

3.2.3 Creation of the national police

From January 2000 East Timorese were able to apply to become police trainees and the National Police College opened in March 2000. On 11 July 2000 the first group of cadets of the new Timor Lorosa’e Police Service (TLPS) graduated. Classes of fifty trainees at a time were provided with three months basic training that was to be followed by up to six months of field training. Three hundred and seventy East Timorese who had served in the

Indonesian police were also recruited, undergoing an intensive training course, which included democratic policing, ethics, human rights and community policing (United Nations 2001a: 5; King's College 2003: par. 89). Training was carried out by CIVPOL instructors, with instruction primarily in Portuguese and English. Portuguese and English were not languages spoken by the majority of trainees so interpreters were required who were in short supply and of variable skill and experience levels. Specialised training in police management, crowd control and civil disaster management was provided by the U.S. International Criminal Investigative Training Assistance Program (ICITAP). The emphasis on rapid deployment of TLPS meant that it was not until the first police had been already been deployed that UNTAET realised the new police had no equipment, prompting a request for an emergency allocation from unspent UNPOL Mission Subsistence Allowance (MSA) (King's College 2003: par. 91). By 30 September 2001 1 068 officers had graduated and 126 had been placed in command positions. On 15 October a former POLRI officer, Paulo Fatima Martins, was appointed Commissioner (United Nations 2001c: 3-4).

In October 2001, as UNTAET started to prepare for a successor mission that would provide support following restoration of independence, most UN reports were upbeat about the capacity of the Timorese police force. However the UN did note that

the East Timorese Police Service has only a rudimentary infrastructure, no logistical or administrative framework, and it continues to be reliant on UNTAET resources for transport, communication and administration (United Nations 2001c: 9).

Despite this harsh assessment, just four months later the UN was confident that

the East Timor Police Service would be able to provide all basic police functions, including crime prevention and detection, traffic police, crowd management and community policing, and to attend to the special needs of vulnerable persons and victims of domestic violence in particular (United Nations 2002b: 13).

The UN attributed the slow pace of building police capacity to a lack of funding in the current budget (United Nations 2000b: 7; West 2007: 322). Other commentators have noted, however, that the assignment of all UN police personnel to executive functions and none to the task of police development activities severely limited the capacity to develop a new police force. Similarly, inexperience in the areas of strategic planning and institution-building both within the UN Secretariat and within UNTAET meant that CIVPOL addressed itself to training at the expense of any institutional development and without view to the process through which handover would be accomplished. (King's College 2003: par. 86, 88). In relation to field training Hood (2006a: 150) concluded that "there was no

coherent, structured strategy, no comprehensive pedagogy, and no uniform, measurable methods of testing the skills learned by the Timorese police, let alone cogent agreement on what those professional skills were in any substantive sense”.

It was anticipated that a process of certification of individuals and accreditation of specialised units or districts would occur and lay the foundation for the gradual transfer of executive responsibility. This handover was to commence in May 2002 and be completed by January 2004, accompanied by a gradual drawdown of international police until only one hundred remained with purely advisory functions. The East Timorese Police Force was expected to achieve its full strength of 2 830 by June 2003 (United Nations 2002b: 4).

Given the avalanche of concerns regarding the East Timorese police from late 2002, it is remarkable that the reports of the UNSG up to the time of independence in May 2002 contain no hint of problems in their training and development. In these reports the brief sections on the police indicate a well-oiled training machine running to schedule, providing reassurance of management training for command positions, the training and handover to Timorese command of specialised units, reviews of performance and the provision of additional training where required. The only limitations alluded to from 2001 were that additional donor support would be necessary for construction of essential facilities, equipment, transport and communications as well as recurring costs for maintenance of vehicles, weapons and other equipment (United Nations 2001b: 5; 2001c: 3-4; 2002a: 4).

During this time CIVPOL created the East Timor Police Service Development Plan, which was completed in January 2002. West has argued that this planning was taking place at a time that “traditional political and social cleavages” had begun to surface but that “CIVPOL lacked an appreciation of the environment in which it was both planning for a new police force and acting as a transitional agency” (West 2007: 322).

3.3. Post-independence development of PNTL under international control

3.3.1 Responsibilities and Relationships

Following the restoration of independence on 20 May 2002, a new UN Mission, the United Nations Mission in Support of East Timor (UNMISET),⁵⁵ assumed a role of supporting the new government, with the mandate making particular reference to providing interim law enforcement and public security and assisting in the development of the East Timor Police Service. This meant that CIVPOL maintained executive policing authority until a handover

⁵⁵ Security Council Resolution 1410 (2002).

to PNTL was completed on 20 May 2004. Up until this time police development was principally carried out by CIVPOL.⁵⁶

UNMISSET was initially mandated for twelve months but was ultimately extended until 20 May 2005. At the completion of the UNMISSET mission a new political mission, United Nations Office in Timor-Leste (UNOTIL), commenced and was in operation until 2006. The UNOTIL mandate made particular reference to supporting the further development of the police and Border Patrol Unit (*Unidade de Patrulhamento de Fronteira – UPF*).⁵⁷

The downsizing of CIVPOL after independence was done to retain and, where necessary, recruit those officers who had specialised skills for mentoring and training. This was the first time that the need for specialised skills was mentioned. Although there had previously been statements regarding the need for better resources, it was only then realised that

the lack of transportation, communication, and other equipment, in particular, keeps them [the PNTL] from gaining the confidence and respect of the communities in which they serve. If this situation persists, it could undermine the morale of the Service and its capacity to maintain law and order (United Nations 2002c: 7).

Confusion about lines of responsibility between UNMISSET and the PNTL proved to be problematic during this period of time. UNMISSET continued to maintain executive policing responsibility. Although an East Timorese Police Commissioner had been appointed, he reported both to the CIVPOL commander and to the Minister for Internal Administration. It has been argued that the resultant lack of real power of the Police Commissioner undermined his standing and authority. Executive and operational command of the police remained with UNMISSET. However, after 20 May 2002 the Minister for Internal Administration became responsible for 'general policy', although a lack of clarity on this matter resulted in disagreements between the Minister and UNMISSET (King's College 2003: 103-104, 109).

According to Taylor, there was not always an easy relationship between members of CIVPOL and the PNTL:

some arrogant CIVPOL officers mistreated members of the new East Timor Police Service with verbal abuse and a condescending attitude, ordering them around and forcing them to do menial and belittling tasks.

⁵⁶ Minor training programmes and equipment were also provided by Australia, Canada, Japan, Malaysia, New Zealand, Portugal, Singapore, the USA and the UK, as well as the United Nations Development Program (UNDP), the United Nations Children's Fund (UNICEF) and the United Nations Development Fund for Women (UNIFEM) (Hood 2006b: 76, n29).

⁵⁷ Security Council Resolution 1599 (2005).

The resultant impacts were animosity from ETPS officers, with lost opportunities for intelligence gathering, relationship building and effective partnerships (Taylor 2003: 3).

As detailed above, until 20 May 2004 UNPOL and the PNTL had joint responsibility for maintenance of law and order but with a unified chain of command under the CIVPOL Commander.⁵⁸ After this date UNPOL maintained a small advisory unit to assist in the development of PNTL (U.S. Department of State 2005). By November 2002 CIVPOL had handed over responsibility in the districts of Manatuto, Aileu, Manufahi and Ainaro, and this was reported as proceeding without any major incidents (United Nations 2002c: 6). Shortly after this time the riots in Baucau and Dili detailed below required the devising of a new handover schedule, with the UNSG noting that a further period of development of the PNTL for a year would be necessary. He argued in relation to PNTL responsibility for security matters that

their premature engagement in such activities runs the risk of weakening them and of lowering their public standing. Furthermore, if the police are seen to be ineffective, there will be increasing political pressure to involve Falintil-FDTL in activities for which it is not mandated, trained or equipped and which could undermine its own essential development process (United Nations 2003a: 3-4).

Bowles and Chopra note the shortcomings of the handover:

On the whole, the UN police did not prioritize helping Timorese counterparts to build the PNTL into an institution appropriate to Timorese social and fiscal realities. Instead UN police carried out their duties as the territory's police force and then "handed over" districts to PNTL. The notion of handing over disregarded the enormous differences in policing skills, management capacity, funding, and equipment resources between the PNTL and the UN Police (Bowles and Chopra 2008: 295).

3.3.2 Concerns start to emerge

Towards the end of 2002 three reports were prepared that examined the development of the East Timorese Police Force. The three reports were the *Joint Assessment Mission for the Timor-Leste Police Service* (hereafter JAM) (JAM 2003),⁵⁹ *A Review of Peace Operations: A Case for*

⁵⁸ The gradual handover of executive authority from UNPOL to the TLPS was mandated by the Supplemental Agreement between the United Nations Mission of Support in East Timor and the Government of the Democratic Republic of Timor-Leste on the transfer of Police Responsibilities to the Timor-Leste Police Service (UNMISSET and Government of the Democratic Republic of Timor-Leste 20 May 2002).

⁵⁹ The JAM was carried out by the East Timorese government, UNMISSET, the United Nations Development Program (UNDP) and development partner countries in the second half of November 2002, and the report was published in January 2003. It was required to: (a) assess the handover of executive authority to the TLPS in relevant districts; (b) assess progress against timetable for the development of the TLPS; (c) assess current TLPS capacity; (d) recommend strategies to address the TLPS's needs; and (e) develop a TLPS capacity building programme (JAM 2003: 7).

Change: East Timor (hereafter King's College Review) (King's College 2003)⁶⁰ and *Amnesty International A New Police Service – A New Beginning* (hereafter Amnesty report) (Amnesty International 2003).⁶¹

These reports raised serious issues about the way that the police had been recruited and trained and the lack of accompanying institutional, legislative and oversight development. The reports noted not only the low capacity of the PNTL, but also the lack of capacity of the UN to provide interim law enforcement and to build the PNTL (Amnesty International 2003: 19-22, 24-39; JAM 2003: 15-28, 30-31; King's College 2003: par. 73-119). The JAM report emphasised that gaps in service delivery could provide an enabling environment for human rights violations, crime and public insecurity (JAM 2003: 11).

The JAM report was initiated by the international donor community and UNDP in response to what Hood describes as “mounting concern over the PNTL’s lack of progress” (Hood 2006b: 66). The review did not at first have the agreement of UNMISSET or DPKO (Hood 2006a: 153). Although by the time of the JAM mission the CIVPOL Commissioner was ostensibly one of the co-leaders of the mission, Hood claims that the Commissioner spent no time with the mission and did not appear to want to cooperate with the team members (Hood 2006a: 161n49). This resulted in other mission members having to take control of the planning, analysis and ultimate writing of the report.⁶²

The JAM and King’s College reports identified a failure to plan for the UNTAET mission and subsequently for the PNTL. Hood attributes this to a lack of institution-building expertise within DPKO at UN headquarters and the failure of UNTAET to set up a police development unit in East Timor for the first nine months of the mission (Hood 2006b: 68-69). The JAM and King’s College reports noted that the TLPS, unlike other government agencies, did not engage in the planning and budgetary processes through the National

⁶⁰ The King’s College Review was conducted by the Conflict Security & Development Group of King’s College, London. The scope of the report was “the planning for and work of the United Nations Transitional Administration in East Timor (UNTAET)” and focused on possibilities for improving practice. The King’s College Review examined the planning for and work of UNTAET in relation to its “mandate, structure, strategy design and implementation, as well as its impact on the people and the governance of the newly independent East Timor” (King’s College 2003: par. i). The research was conducted from August 2002 to January 2003, with the bulk of field work taking place in September 2002. The report was published in March 2003.

⁶¹ Amnesty International’s mission to East Timor on policing and human rights was conducted between 30 September and 16 October 2002 and was published in July 2003. The purpose of the Amnesty mission was “to assess the extent to which human rights standards are being integrated within the development process and operations of the new National Police of Timor-Leste (Polícia Nacional de Timor-Leste, PNTL)” (Amnesty International 2003: 1).

⁶² Due to the non-participation of the team leaders the report ended up being drafted by team members including Hood together with John Tynnell from the Human Rights Unit and Bernice Masterson, a Police Advisor. Interview with Bernice Masterson, 13 April 2007 in Melbourne.

Development Plan. This was exacerbated by the Ministry for Internal Administration, who had nominal responsibility for the TLPS, having no capacity to provide support with these matters (JAM 2003: 20; King's College 2003: par. 102). A comprehensive development plan for the TLPS was not completed by CIVPOL until late 2001, with the King's College report believing this delay could be attributed to a failure of CIVPOL to assign any of their personnel to the police development function in the original mission design, resulting in a focus on training rather than institutional development. The development plan was never translated into any language accessible to their Timorese counterparts (King's College 2003: par. 79, n106, par. 96).⁶³

The JAM and King's College reports also noted significant failure to develop operational and management structures, lines of reporting and oversight mechanisms. Although there was a reporting line to the East Timorese Police Commissioner, there was no apparent chain of command underneath him. The resulting confusion meant District Commanders either continued to rely on CIVPOL, particularly for high priority incidents, or would go straight to the Commissioner. The JAM report was significant in highlighting that a culture of personal rather than institutional authority was developing in the PNTL through this ambiguity of management arrangements (JAM 2003: 23). The JAM report also raised concerns about political interference from politicians directing arbitrary action, lack of external oversight mechanisms and the need for particular oversight of the special police units (JAM 2003: 23). CIVPOL and UNTAET more broadly failed to develop operational and management structures, believing what they doing was 'training' without appreciating that the establishment of a public service institution is a significantly more complex undertaking.

The King's College report raised a number of significant concerns about CIVPOL officers deployed to East Timor. Many CIVPOL members did not have high levels of policing skills, and a number had to be repatriated due to not meeting minimum language, driving or firearms requirements (King's College 2003: par. 75, 81). This was exacerbated by insufficient pre- and in-mission training for CIVPOL, with King's College also judging that the training was of poor quality (King's College 2003: par. 76). The report identified that those deployed had law enforcement skills, rather than institutional strengthening and organisational development experience, and therefore had difficulty fulfilling their assigned roles. This led to CIVPOL officers tending to "police themselves rather than teach East Timorese officers how to police" (King's College 2003: par. 100). As CIVPOL officers

⁶³ Pers. Comm. Edward Rees 16 September 2009. Rees arranged translation in 2003 in his role with the NGO National Democratic Institute but confirmed that it was never translated by CIVPOL.

were deployed on short rotations of usually six, or sometimes twelve, months they had limited opportunity to develop personal experience or institutional memory. This phenomenon was made worse as outgoing and incoming officers had no opportunity to do 'handovers, and departing CIVPOL sometimes removed computer records when they left (JAM 2003: 22).

The JAM and Amnesty reports found that although large numbers of East Timorese police passed through the Police College, the three months training was too short, did not correspond to job requirements, and was of poor quality. They found that an imperative to achieve a target number of police officers, which would enable a rapid handover of policing from CIVPOL to the East Timorese government, contributed to these shortcomings (Amnesty International 2003: 25; JAM 2003: 24; Hood 2006a: 149-150). Former POLRI members received a separate and abridged training of only thirty days. The JAM report raised concerns that this "may have hindered their integration and acceptance within the TLPS and elements of the wider community' (JAM 2003: 43). Simonsen argues that (2006: 589) resentment toward former POLRI may also have been exacerbated when they were fast tracked through a U.S. provided police training programme (ICITAP) and then placed at a higher rank than those completing the standard course.

The quality of field training was variable; with the type of policing taught dependent on the police officers' country of origin (King's College 2003: par. 100). Although a field training programme of three months was supposed to occur it did not proceed according to plan, something partly attributable to CIVPOL officers being unclear as to the applicable law and the lack of standard operating procedures across the districts (JAM 2003: 21). Hood describes the field training programme:

[It had] no coherent structured strategy, no comprehensive pedagogy, and no uniform, measurable methods of testing the skills learned by the Timorese police, let alone cogent agreement on what those professional skills were in any substantive sense (Hood 2006a: 150).

Rather, CIVPOL officers would tend to implement practices and procedures from their home country. When they left no handover was undertaken and the new CIVPOL would start again with the practices and procedures of their particular country. In the circumstances it would appear unlikely that the confusion of CIVPOL was going to translate to anything better than confusion for the East Timorese police. However, the JAM report cautioned that until the government made decisions on the nature of the police service they were building it made no sense to start developing standard operating procedures (JAM 2003: 22).

The Amnesty report identified emerging human rights problems, a lack of clarity on the use of force, firearms, arrest and detention procedures and the selection of security equipment. The report concluded that

despite significant progress, the PNTL remains a fragile and underdeveloped institution which is not yet adequately prepared, equipped or sufficiently well supported, for the task of maintaining law and order in a manner which is consistent with international human rights law and standards (Amnesty International 2003: 1).

Following its mission in East Timor, but prior to the publication of its report, Amnesty International was able to illustrate its findings by incorporating observations on PNTL's capacity to respond to riots in Dili on 4 December 2002 (discussed below). Amnesty noted in relation to the events of that day:

PNTL officers shot some 18 people, two fatally. Around 80 people were arrested during the day and there are credible reports that some were beaten by PNTL officers during arrest and when in custody. Although details of the day's events remain sketchy, it is clear that command and control rapidly broke down and that, in the absence of procedures, effective training and access to non-lethal alternatives to firearms, the PNTL was unable to respond appropriately. Failures in discipline among PNTL officers were also evident (Amnesty International 2003: 1-2).

The Amnesty report was also significant because it was one of the first reports to identify that the PNTL were not only being undermined by their own actions and lack of capacity but also by the political leadership and elements of the military who were clearly seeing the F-FDTL as a suitable alternative provider of internal security (Amnesty International 2003: 2).

It has already been noted that CIVPOL were confused about what community policing was supposed to entail. This was also evident in relation to East Timorese police. The JAM report notes that whereas community policing was "ostensibly intended to improve police community relationships some also saw it as a means of gathering 'information' from communities or an informer network" (JAM 2003: 27). This perception would have been consistent with the experience of policing during both the Portuguese colonial period and the Indonesian occupation.

A critical issue identified by the reports was the need for Timorese ownership of the police development process. The JAM recommendations tended to be forward looking – stressing that "as the TLPS moves closer to taking formal control of its functions it is critical that it has ownership of its planning and future development" (JAM 2003: 34). The King's College report argued that the status and standing of the PNTL would have improved if

there had been greater opportunities for consultation and participation by East Timorese counterparts, in particular in relation to selection and training of recruits. A reading of the report also makes it apparent that any UNTAET understanding of Timorese ownership of the process was confined to getting agreement to pre-determined courses of action, with attendant reluctance to relinquish control:

While the ETPS development plan, which laid out the transitional structure for joint UNPOL–ETPS policing, was presented and agreed to by the East Timorese Chief Minister in January 2002, consultation on it was less substantive than symbolic. Negotiations on the Supplemental Arrangement on the Transfer of Police Responsibilities to the East Timor Police Service took place during the last weeks before independence, and government authority over the police was only relinquished after considerable pressure from the UN Secretariat (King's College 2003: par. 358).

These criticisms were located in a broader criticism of

[the UNTAET mission's] failure to specify at the start what sort of mechanisms should be introduced for East Timorese participation, for its reluctance to Timorise political and administrative structures and for its slowness in developing a timetable for the political transition (King's College 2003: par. 295).

Hood's assessment (Hood 2006a: 151) of the failure to address ownership issues was excoriating. Like the King's College report, he noted the proclivity for form over substance: "the scant dialogue that did take place was essentially confined to ad hoc rubber-stamping by the senior Timorese leadership".

The three reports regarding the development of the East Timor Police Service all came to similar conclusions regarding both the process and outcome of police development. Both the King's College Review and the JAM report were influential in driving new approaches intended to address many of the most serious shortcomings of the UN's approach to police-building in East Timor, including the development of the Australian-led Timor-Leste Police Development Programme (TLPDP).⁶⁴

⁶⁴ The TLPDP is funded by Australia and the United Kingdom and was initially delivered jointly by the Australian Federal Police (AFP) and an AusAID-appointed Australian Managing Contractor, Hassall and Associates. The early focus of the TLPDP was on crime prevention and community safety, investigations and operations, training and development, administration, oversight and strategy including financial, human resource and logistics and asset management. The TLPDP designed a new curriculum for the Police Academy mainstreaming human rights throughout the program. Although the UN continued to be involved in development of the PNTL and a number of other countries provided specific targeted courses, it was the TLPDP that provided the great bulk of training from its inception in July 2004 until it suspended its program following unrest in Dili in April and May 2006. The continued role of the TLPDP following the crisis in 2006 is discussed in chapter 6.

The response of the UN to the reports was tepid. The JAM report had recommended that an institutional strengthening working group be formed and emphasised the importance of Timorese government ownership and involvement in the process. Hood details the tasking of the Deputy Special Representative of the Secretary General (DSRSG) with devising a list of people to comprise a high level Institution and Capacity Building Committee. The list included ten CIVPOL officers and only one Timorese police officer. The problem apparently had to be rectified with input from UNDP so that the three relevant East Timorese ministries and representatives of civil society were included. In any event Hood notes that

the process proved to be an outright failure and collapsed within six months. The reasons for this included the setting of politically motivated deadlines to coincide with UNMISSET's expected termination in May 2004, the lack of ownership by PNTL and Timor-Leste government officials; micromanagement by UNMISSET staff, none of whom possessed institution-building or organisational development knowledge; and the immense pressure put on senior and mid-level PNTL officers who were already trying to cope with an ill-conceived process of change (Hood 2006a: 154).

During the follow-on UNMISSET and UNOTIL missions training continued to be provided, usually at the district and subdistrict level, by UNPOL who were not trainers.

3.3.3 Critical incidents

In addition to the findings of the reports detailed above a number of critical incidents further illustrate problems with the development of the East Timorese police institution, in particular in relation to their training, experience and tendency to excessive use of force. The incidents highlight the associated failure to distinguish the roles of the military and the police. These incidents are the riots in Baucau and Dili in November and December 2002 and the attacks in the villages of Atsabe and Atabae in early 2003.

November/December 2002 riots in Baucau and Dili

The authority of PNTL in Baucau had been subject to challenge for some time but reached a critical juncture in the second half of November 2002. On 18 November police attempted to remove an illegal roadblock set up by villagers to collect tolls. In the ensuing clash a PNTL officer was severely injured with a machete, his firearm was stolen, the alleged attacker was shot and injured and over 160 shots were fired by the police. Some of those arrested were held considerably longer than the seventy two hours allowed by law before being brought before a judge. On 25 November several hundred people attacked the Baucau Police Headquarters to protest against police recruitment procedures. Warning

shots were fired and a protester injured by a shot fired by a PNTL officer later died in hospital (Amnesty International 2003: 12-13; United Nations 2003c: 6-7).

In Dili on 3 December 2002 a twenty year old was arrested during the exam period at school and, according to witnesses, the PNTL used excessive force. The following day protests by students and their teachers at the National Parliament gave way to broader protest that spilled over into looting and arson throughout the city. As well as attacks on the Parliament building, there were attacks on Police Headquarters and the mosque, and the house of the Prime Minister was destroyed. Allegations have been made of key political figures 'winding up' crowds, criticising the PNTL, and of other people coordinating and directing targeted attacks. The PNTL response alternated between inaction and use of excessive force. There are reports that at the height of the violence PNTL officers were seen hiding in the principal government offices, the *Palacio Governo*, where they were attempting to dispose of their uniforms so that they could not be identified as police. On the other hand, hundreds of rounds of live ammunition were fired, two people were shot and killed and fifteen people were hospitalised with gunshot wounds. Police were also injured in the riots. Seventy seven people, including children on the way home from school, were arrested during the day. Sixty seven of these were ultimately released uncharged.⁶⁵ Many of those detained were beaten severely by police. As the capacity of detention facilities was limited, those arrested were held in temporary detention in Tasi Tolu on the outskirts of Dili, interviews were conducted without representation, and a number of people were held beyond the allowed seventy two hour period without being brought before a judge (JSMP 2002d; Amnesty International 2003; United Nations 2003c).

The Atsabe and Atabae attacks

In January and February 2003 two separate attacks by armed groups on the civilian population occurred in the villages of Atsabe, in Ermera District and Atabae, in Bobonaro District. Five people were killed in Atsabe⁶⁶ and two in Atabae. It is unclear who was involved in the attacks. After the attacks in Atsabe residents of the local area requested UNMISSET to deploy F-FDTL and this was agreed to without any process. F-FDTL conducted a sweeping operation, arresting over ninety men, including a number of juveniles. Although detainees were subsequently handed over to the PNTL, they were held in overcrowded prison conditions beyond the seventy two hour period allowed by law. F-

⁶⁵ A different account of events is contained in the memo entitled "Executive summary of investigations of police response to the riots of December 2002" from UNPOL Commissioner Sandi Peisley to SRSG Kamallesh Sharma, dated 14 November 2003. In the memo she claimed that eighty eight people were arrested who had been involved in burning and looting.

⁶⁶ According to La'o Hamutuk seven people were killed (La'o Hamutuk 2003).

FDTL remained in the area, together with the Portuguese PKF, from 6 January to 14 February. The incident occasioned considerable interest after the local NGO, the Judicial System Monitoring Programme (JSMP), criticised the deployment of F-FDTL, noting that the F-FDTL did not have powers of arrest under the Constitution and the Transitional Rules of Criminal Procedure. JSMP also noted that the men's detentions were not reviewed by a judge within the required seventy two hour period (JSMP 2003b, 2003c). East Timorese political leaders including Xanana Gusmão, Mari Alkatiri and Brigadier-General Taur Matan Ruak and members of Parliament were outraged by JSMP's analysis, and vociferously supported the decision to deploy F-FDTL, thereby contributing to public confusion about the respective roles of the police and military (United Nations 2003c: 8; Wilson 2008).

The case highlighted the lack of legislative and policy framework for enlisting the domestic use of the military,⁶⁷ as well as illustrating the lack of confidence in the PNTL and a widespread belief that it was only the F-FDTL who could really provide internal security. The case also highlighted the problem of an army, with grassroots provenance, in search of a role. Similarly, following the incident in Atabae it was the PKF that searched the area and arrested suspects. The local population requested that PKF be involved rather than the PNTL (JSMP 2003b, 2003c; La'o Hamutuk 2003: 7; United Nations 2003a).

Unhappy with the Atabae and Atsabe cases being handled by F-FDTL and the PKF, Minister Rogerio Lobato responded by expanding the role of the police. He established the paramilitary *Unidade de Reserva da Polícia* or Police Reserve Unit (URP) and the UPF to handle border control, cross-border militia attacks and rural counter insurgency. For F-FDTL the handing over of border issues to the police was very unwelcome. Tensions between the two forces regarding resource issues were once again inflamed by the arrival of large consignments of semi-automatic and automatic weapons for the police, commencing the day that the UN's executive authority for security was handed over to the East Timorese government (United Nations 2006a: 19).

The increase in civil disturbances from the end of 2002, coupled with suggestions of former militias and armed groups forming bases in East Timor, led the UN to revise its approach to security (United Nations 2003d: 4-8). Additionally, the UN had been heavily criticised for its poor management of the security incidents described above (Joint

⁶⁷ The deployment of the military in domestic circumstances to bolster the strength of the police raises critical legal, political and constitutional questions (Whelan 1985: 264). In countries such as the United Kingdom, Canada, or the United States this will be legislated for under the rubric of terms such as 'Military Aid to the Civil Power' or 'Military Aid to the Civil Community'.

Statement of Civil Society Organizations in Timor Lorosa'e 2002). Both the UN military strategy and configuration and the policing strategy were revised. This occurred because the UN no longer considered the East Timorese police capable of addressing anticipated security threats. This judgement was emphasised with some of the more volatile districts that had not yet been handed over, such as Baucau, Viqueque and Dili. The revised strategy adjusted the size, composition and downsizing schedule of UNPOL and noted the need for further training of PNTL – in particular the *Unidade Intervensãun Rapide* or Rapid Response Unit (UIR).⁶⁸ The monitoring and advisory presence of UNPOL in the districts that had already been handed over to PNTL control was increased; and the remaining handover schedule was adjusted. A UN Formed Police Unit was deployed to manage civil disturbances while the UIR was being retrained (La'o Hamutuk 2003: 7-8; United Nations 2003d: 6-8).

3.4 East Timorese assume executive policing

Although the UN progressively handed over the security institutions to the East Timorese government, the institutions were operationally and institutionally weak, their roles were ill defined and their governance and accountability framework was poor. Similarly, other judicial system institutions were weak, affecting the ability of the police to carry out their role. This is discussed further in chapter 4. Reports expressing concern about the PNTL escalated following the final handover on 20 May 2004.

PNTL were poorly equipped, undertrained and reluctant to investigate cases, yet primary concerns focussed on their human rights abuses and abuses of power and an associated developing culture of impunity. Each year the U.S Department of State expressed these concerns in great detail, as did Human Rights Watch and Caritas Australia.. Concerns raised included criminal conduct of police, professional misconduct, arrest without warrant, using public office for a private purpose, excessive use of force, arbitrary detention, incidents of torture and other cruel and degrading treatment by police officers, sexual abuse and illegal pre-trial detention and unlawful killing. An institution-wide failure to take action against police accused of such matters was also noted (Graydon 2004; U.S. Department of State 2005, 2006, 2007; Human Rights Watch 2006).

⁶⁸ The UIR is a special unit of the PNTL, (formerly known as the Special Police Unit, SPU) that has received special mention in a range of reports. They were initially trained by Portugal, then Malaysia and Australia. Following the 4 December 2002 riots in Dili they received further training from Malaysia in the use of force and crowd control (La'o Hamutuk 2003: 7). The Amnesty report noted that the UIR was already developing a reputation as being the same as 'Brimob', the paramilitary wing of the Indonesian police with an atrocious human rights record (Amnesty International 2003: 56).

During this period four different bodies were responsible for oversight of police discipline matters in East Timor.⁶⁹ There was considerable ambiguity regarding competence for disciplinary procedures between the three internal bodies. The Disciplinary Regulation of the National Police of Timor-Leste,⁷⁰ which replaced the UNTAET Code of Conduct, was promulgated soon after East Timorese authorities assumed responsibility for policing. It was not initially available in a language accessible to PNTL personnel and consequently the previous UNTAET Code of Conduct continued to be used. An examination of the Disciplinary Regulation finds complex mathematical formulae for determining disciplinary proceedings. These would be extremely difficult for many PNTL to understand or apply, given the limited educational backgrounds of many members.

The PEDU received a large number but had insufficient resources and experience to deal with them. Consequently Human Rights Watch criticised PEDU for failing to take cases of police abuse seriously or follow through with investigations and disciplinary action (Human Rights Watch 2006: 5). The U.S. Department of State (2004) characterised the office as lacking in morale due to frequent overruling of its recommendations by the Police Commissioner, claiming that personal connections within the police force were a factor in determining whether the Commissioner took action on disciplinary matters. The Provedor for Human Rights and Justice (PDHJ) (2006: 20)⁷¹ reported that for the year 2004-5 more than one third of all cases received relate to the PNTL. In a June 2007 interview the Deputy Provedor for Human Rights said that the great majority of cases dealt with by his Division continue to relate to the PNTL.⁷²

⁶⁹ The first body is the Professional Ethics and Deontology Office (PEDU), formerly known as the Professional Ethics Office, created by Decree Law 8/2004 Organic Law of the National Police of Timor-Leste, and is "in charge of inquiries, investigations and disciplinary procedures as determined by the PNTL General Commander" (Art.13). The second body is the Superior Police Council (SPC) which is established by the same law (Art 27). SPC responsibilities include issuing opinions on "any other matters of importance within the disciplinary scope of, or relating to, the PNTL, as requested by the Minister of the Interior". The third body is the Office of Inspection within the Ministry of Interior, created by Decree 3/2004 Organic Structure of the Ministry of the Interior. It is the "organ with disciplinary competence over all structures and institutions subordinate to the Ministry of the Interior" (Art.11). This includes the PNTL (Art.12). The final oversight body, and the only external one, is the Provedor, established by Law 7/2004 Approving the Statute of the Office of the Ombudsman for Human Rights and Justice which empowers the Ombudsman "to exercise his or her functions within the scope of public entities, notably the Government, the PNTL, the Prison Service and the F-FDTL" (Art 3.1).

⁷⁰ Decree Law 13/2004.

⁷¹ The Office of the Provedor is similar to the institution of an Ombudsman in other jurisdictions. Section 27 of the Constitution provides for the Provedor for Human Rights and Justice. The powers of the Office of the Provedor are outlined in Law 7/2004. The Office can investigate and report on complaints against government officials and institutions, including the police but does not have the power to make enforceable decisions.

⁷² Interview with Deputy Provedor 22 June 2007, Dili.

The role of the former Minister of the Interior, Rogerio Lobato, has been pivotal in a number of periods in East Timorese history, none more than in the early development of the PNTL covered in this chapter. In chapter 2 I described Lobato's historical role as a conflict entrepreneur. Rees (2004b) describes how upon Lobato's return from exile in 2000 he was unhappy that he was not chosen to be Minister of Defence. This was a position Lobato felt 'entitled' to, having previously served as Minister of Defence in 1975 and as Commander of Falintil before being sent overseas to enlist international support for the resistance struggle. Upon his return he embarked upon organising former combatants to conjure up a threat of violence and demonstrate his personal potential for inciting disruption. This resulted in his being allocated a formal role as Minister of the Interior, with responsibility for the police. Allegedly, the government of Mari Alkatiri believed he would be less disruptive on the inside than the outside (Rees 2004b). In this position he neglected the development of the Ministry, in particular those functions such as civil security and disaster management, and devised special police forces that were personally loyal to him rather than the state (Bowles and Chopra 2008: 296). In Lobato's role as Minister he set up parallel chains of command and involved himself intimately in operational matters. He harnessed anger against the former POLRI he had inherited and was also instrumental in promoting officers from the west rather than the east. This in turn secured a particular kind of personal loyalty from parts of the police force opposed to the inclusion of former POLRI (Bowles and Chopra 2008: 296). Lobato's part in the unfolding crisis of 2006 is discussed further in chapter 6.

The performance of the East Timorese government in the development of the PNTL after restoration of independence in 2002 is almost impossible to separate from the struggles that went on among the leadership regarding control over the police and military, and associated access to power and resources. These historical divisions, outlined in chapter 2, continued to influence the way in which the PNTL and the F-FDTL were developed. The subsequent poor relationship between the two organisations and the way this dynamic has become part of the security sector context is discussed further in chapter 5. It is arguable that the structural weaknesses of the PNTL (and the F-FDTL) made the politicisation of these institutions easier.

3.5 Resonances with the Indonesian police and military

The historical experience of the state, and more particularly policing in East Timor during the 500 years of Portuguese colonisation and twenty four years of Indonesian military occupation, influenced not only the political elite but the entire population. These experiences have had a profound impact on people's expectations of the role and

legitimacy of the state and its institutions, including the police. This in turn affects the reception of externally-led state-building, and in this particular case police-building.

In this section I refer to analysis developed in chapter 2 to argue that the Indonesian model of police and military security continues to influence expectations of the role of the police (and military) in East Timor and hence the way in which those forces developed, despite application of the Indonesian model being widely discredited for its destructive influence there and in other parts of Indonesia.⁷³ It is arguable that some of the ways in which the relationships have developed between the PNLT and F-FDTL in post-independence East Timor can be seen as echoes of issues that arose in relation to the police and military in Indonesia.

After Indonesian independence in 1945 the Indonesian police force, which preceded the Indonesian army, comprised generalist police as well as mobile brigades (Brimob) which were charged with maintaining internal security. Following the development of an Indonesian armed forces, competition arose between the army and the police as to who could 'claim' Brimob (Lowry 1996: 109). This presents interesting parallels with the political manoeuvring and competition that occurred between the police and the military in independent East Timor, in particular over which institution would fulfil the requirement for 'riot police'. This competition became evident when F-FDTL were deployed during the attacks in Atsabe discussed above, leading to the disgruntled Minister of the Interior embarking on the creation of specialist police forces. The demeanour of these special forces was characterised by East Timorese observers as the same as the former occupiers' Brimob (Amnesty International 2003: 56). Like Brimob, the UIR specialised in policing public order situations.

As East Timor assumed executive policing and external defence responsibility in 2004 the government began procuring new weapons, many of them military-style weapons, for the special police forces.⁷⁴ It has been reported that these purchases greatly displeased the F-FDTL (Timor-Leste Armed Violence Assessment 2008: 6). Although it had been claimed that the F-2000s would be used for patrolling the border they were soon seen being carried by ministerial bodyguards and the UIR (McDonald 2006).

⁷³ It is of note that in May 2008 the Secretary of State for Defence and the Prime Minister visited Indonesia and announced that Indonesia would take on a role training East Timor's police and military.

⁷⁴ These included 180 HK33 semi-automatic assault rifles for the URP, 200 Steyr semi-automatic assault rifles for the UPF and 66 FNC semi-automatic assault rifles and 7 F2000 automatic machine guns for the UIR (Timor-Leste Armed Violence Assessment 2008: 6).

Competition between the Indonesian police and military under President Sukarno “was driven by the status attained by the Army during the revolution and by the colonial heritage of the police” (Lowry 1996: 109). Similarly, in East Timor competition between the F-FDTL and PNTL, in particular over the control of internal security, was underwritten by the resistance antecedents (and consequently elevated status) of F-FDTL, as opposed to the lesser status of PNTL. PNTL’s diminished status was in part due to the incorporation of a number of East Timorese citizens who had previously worked for the Indonesian police (POLRI) and whose resistance credentials were thus considered questionable.

President Sukarno actively “promote[d] rivalry between the services in order to sustain his authority” (Lowry 1996: 109). In the same way Rogerio Lobato fuelled rivalry between the two services to extend his own authority. Other members of the Timorese leadership battled to maintain control over one or other of the services. Usually this control was exercised through personal and charismatic power rather than through institutional authority.

In Indonesia Sukarno subordinated the police to the military, a situation which became more entrenched during the New Order with disputes arising when one service tried to investigate the other or impose its authority in some other way (Lowry 1996: 109). This has also been apparent in East Timor, where the police and military have clashed seriously on a number of occasions. This is discussed further in chapter 5. The theme of conflict and competition between F-FDTL and PNTL in relation to the 2006 crisis is discussed in chapter 6. The decision in February 2008 to place the PNTL under the F-FDTL in a joint command is discussed in chapter 7.

3.6 The peripheries of the state

Most of this chapter has examined how the development of a state-based police force in East Timor, under both international and national auspices, produced an institution that was both weak in institutional integrity and effectiveness, and excessively strong in its resort to the use of force. Expectations about the nature of policing developed during the Portuguese and Indonesian eras, together with divisions carried over from the resistance era, saw the development of a factionalised, politicised and unaccountable force. All of these factors affected the legitimacy of the police. However, in addition, the limited effective reach of the police and justice institutions beyond the edges of the capital meant that older forms of dispute resolution and order maintenance continued to prevail.

There exists a dedicated body of work on the underpinnings and extent of customary law and how it interacts with the formal legal system in East Timor.⁷⁵ Much of the literature depicts a choice between the courts and ‘traditional dispute resolution systems’. There is little appreciation that determining who people choose to do their policing is also an important question.

A survey by TAF in 2004 on Citizen Awareness and Attitudes Regarding Law and Justice in East Timor found a preference for resolving disputes at the lowest level possible either within the family or within the traditional *adat* system and only involving the formal legal system for ‘serious’ crimes. Additionally *adat* law tends to be the law of choice for conflicts within family or village, whereas formal law is used for conflicts involving outsiders, business or government (The Asia Foundation 2004: 2,5). TAF argues that “the formal legal system is perceived to be less fair, less accessible, more complex and a greater financial risk” (The Asia Foundation 2004: 2). In keeping with these findings, eight out of ten respondents believed that community leaders and not the police are responsible for maintaining law and order (The Asia Foundation 2004: 5).

In 2008 TAF followed up its 2004 survey with a Survey on Community Police Perceptions in East Timor. The survey is important in updating information about choice of law in relation to provision of security. TAF found that “the national public is four times more likely to identify community leaders, rather than the PNTL, as the individual or institution which has primary responsibilities for maintaining security in their locality” (Chinn and Everett 2008: 8). Unexpectedly, this is also borne out in the capital, where it has been widely held that ‘modernity’ has more sway. In Dili only sixteen percent of the general public say the PNTL has primary responsibility for maintaining security (Chinn and Everett 2008: 24). The survey fails to find consensus on whether it is suco chiefs, elders, or community leaders in general who have primary responsibility for maintaining security in their locality. The study concludes that it is likely this can be explained by there being a multiplicity of actors, in fact even a multiplicity of ‘community leader’ actors, involved in the maintenance of security and that this will be highly specific to a locality (Chinn and Everett 2008: 23).

Of equal importance are the TAF survey findings on ‘what the police do’. Eighty six percent of PNTL say they are involved in informal dispute resolution. This is roughly corroborated by community leaders and to a lesser extent by the general public. In the

⁷⁵ See e.g., Soares (1999), Berlie (2000), JSMP (2002a), Mearns (2002), Hohe and Nixon (2003), Ranheim (2005), Grenfell (2006), Meitzner Yoder (2007), McWilliam (2008).

survey PNTL members cite involvement in the following disputes: “domestic violence (39%), traditional mediation on dowry (36%), land dispute/theft of property (26%), local fighting (13%) and other minor cases (13%)” (Chinn and Everett 2008). Informal dispute resolution although not explicitly part of the PNTL mandate clearly finds a cultural resonance that makes it acceptable to PNTL and community leaders alike.

It is clear that during the period covered by this chapter, East Timorese were utilising a variety of non-state mechanisms for accessing justice and ‘policing’ service. However, the absence of fully functioning state-based police systems also led to a variety of hybrid innovations in policing and justice that were initiated variously by the community as well as UNPOL, UNTAET District Administrations and PNTL officers themselves. In the East Timorese context this can in part be explained by the fact that in such a numerically small society police officers deployed in their districts of origin are not primarily the impartial and disembodied actors *imagined* in the Western version of a police force. Rather, everyone in the community knows who that police officers’ family is, what that family’s social capital and standing is, and what other resources, if any, that person can bring to bear on any law or order situation.

During my fieldwork in Oecussi in November 2007 a number of police and legal respondents confirmed that police often refer cases, including sexual assault, to community leaders for resolution. I was also informed that often the police would be invited by community leaders to attend these meetings, although there were differing opinions as to whether their role was to provide security or participate in conflict resolution efforts. I queried the UNPOL Commander on the practice of referring sexual assault cases to community leaders and he stated that “the ends justify the means”. When I mentioned the practice to a senior UNPOL on my return to Dili he put his hands over his ears and said “please don’t tell me that”, as it both contravened UN guidelines and is not part of the ‘imagined’ work of building a modern police institution. On the same fieldwork trip I witnessed what occurred when a woman wanted to report domestic violence to the PNTL. What appeared to be the entire on-duty contingent of the Oecussi PNTL crowded into the public reception area of the police station, seeking to give their opinion on how best to resolve the issue. Although she was persisting in wanting to lay charges, the majority of PNTL thought things could be resolved in better ways.

In late 2004 I witnessed a similarly ‘communitarian’ phenomenon in the Dili police station as police tried to resolve an incident between two young people, an East Timorese woman and a Sudanese man. The two people lived in the same neighbourhood in Dili and the

young man was under the impression that the young woman was his girlfriend. After the two had sex the woman demanded payment. When the young man refused on the basis that they were girlfriend/boyfriend she proceeded to smash up his house and he called the police. The police promptly arrested both of them. The process at the police station was notable for the police displaying no particular hierarchy amongst themselves in deciding how the matter should best be resolved; in fact every police officer on duty was crammed into the room and had an opinion on how it should proceed. The diversity of opinions appeared to be informed by widely varying interpretations and misinterpretations of the law. The police were willing to involve the many friends of the young man, including myself, who had been summoned by SMS, in coming up with solutions to the problem. They thought that our suggestion of giving the woman the money she asked for and every one going home was of merit but were hindered by the fact that their printer didn't work and they couldn't type up a report. After we helped fix the printer, PNTL typed up the report. It was during this process we became aware that the girl was only fifteen years old. The police remained oblivious to the legal consequences of the girl being 'underage'; allowing everyone to go home once the report was completed.

What is not clear either from the TAF survey results or from my own observations is whether the use of informal dispute resolution, either carried out by the police or by community leaders (sometimes referred by the police and sometimes with the police in attendance), is a response to a non-functioning or non-accessible formal justice system, whether it corresponds to a more culturally resonant way of achieving security and/or justice, or an amalgam of the two dependent on circumstances and locality.

Few of these hybrid policing ventures have been documented in any detail. This is unfortunate, as there is utility in distinguishing between innovations that resonate with existing mechanisms and could be shown to provide improved access to justice and security, and innovations more along the lines of "this works in my country – can't see why it wouldn't work here".

According to West (2007: 321), the TLPS Policy and Planning Unit experimented with models of community policing that would coordinate the work of police enforcement with pre-existing local customary practices. This included 'the Koban Model for Community Policing'⁷⁶ drawing on a Japanese model of policing that had been adapted by the

⁷⁶ The Koban model, which involves small staffed police boxes through out neighbourhoods for rapid police response and visibility, appears to make intermittent but repeated appearances as a proposed model in East Timor. The Japanese International Cooperation Agency (JICA) sent PNTL officers to Singapore and Japan in 2005 to learn about the Koban system. JICA also noted in 2007 and 2009 that it had been working closely

Singaporean police. There were also Law and Order Committees that comprised community policing officers and local leaders. West contends that often these operated as “one CIVPOL or TLPS officer solving local problems through the good offices of a local leader”.

One of the most significant attempts to document hybrid policing innovation is found in a memo compiled in 2001 by Adrian Norwell, CIVPOL Districts Coordinator. The memo details research on the great variety of ways in which ‘traditional justice mechanisms’ were used by CIVPOL District Commanders and Community Policing Officers in ten districts in East Timor. Norwell’s research appears to have been inspired by his observation that the criminal justice system in East Timor was “overloaded and confused”. He concluded

all agree that there could be a formal connection between their justice system and the “civpol” or criminal justice system, all agree that they would like more input into the way in which they are policed and all agree that they wish to help in forming the bonds necessary to achieve these aims (Norwell 2001).

It is of note that apart from those academics who have obtained copies of the memo directly the research appears unknown among UNPOL in East Timor, highlighting the limited transfer of institutional knowledge within the UN.

3.7 Conclusion

This chapter has examined the executive policing role of the UN from 1999 and the development of the PNTL from 2000. The circumstances that confronted the UN on their arrival in 1999 were extreme and there was considerable difficulty experienced in deploying sufficient UNPOL. Many of those that did arrive were lacking in basic policing skills, let alone the specialised skills required for training and mentoring. Lack of appreciation of local contextual factors was exacerbated by rapid rotations, diverse national contingents and limited ability to communicate with East Timorese. The limited capacity of the UN to carry out their development task was made worse by a misapprehension that what they were engaged in was ‘training’, not appreciating that the development of a public service institution is a significantly larger undertaking. The fallacy of assuming that a thousand international police can be flown into a post-conflict situation to carry out the building of a new institution first became apparent during this time.

with the PNTL on the Koban system (JICA 2005, 2007, 2009). Dili has many Koban boxes. These boxes were all repainted in 2009 with the image of UNPOL and PNTL holding hands but have remained unoccupied, except for providing protection from the sun for wandering goats.

The poor technical development of the PNTL has seriously affected both the real and perceived capacity and integrity of the police. Emerging concerns about lack of accountability, development of a culture of impunity and increasing abuses of power further diminished the perception of the institution. The notion that the police, in great part through the actions of the Minister, had become a politicised force made a claim to be impartial very difficult.

The historical experience of the state during the Portuguese colonial era and the Indonesian occupation conditioned contemporary expectations of the role and behaviour of police. This influences both the conduct and performance of the PNTL themselves as well as how the broader population and leadership perceive the legitimacy of the PNTL.

Arguably the development of the PNTL could have been greatly improved by broader consultation with and involvement of, East Timorese citizens in determining what kind of security forces were required and how they would be established. It is clear from examining documents associated with the early development of the PNTL that the local ownership discourse was yet to enter the vocabulary in any significant way. The limitations of applying a local ownership approach however need to be understood in the context of the limited experience of any model of democratic policing by Timorese interlocutors.

The UN was slow to acknowledge the extent of the police developmental problems. This meant that the opportunity provided by executive authority and a relatively benign political situation were squandered. Although the UN continued to have an executive policing role and responsibility for police development, the running of the PNTL on an every day basis was largely out of their hands and significant public as well as subterranean battles over the future and control of the security forces were well underway.

Chapter 4

The rule of law context

4.1 Introduction

The purpose of this chapter is to explore the way that rule of law context affects the practice and development of policing in East Timor. In chapter 2 I considered the importance of East Timor's history for understanding the way in which the security sector, including the police, has developed. In this chapter I situate the development of the PNTL in a further layer of context by discussing the establishment of the formal legal institutions of East Timor since 1999. I examine these developments as part of an international rule of law 'project' as well as analysing the way that 'the law' and the 'rule of law project' is perceived and responded to in East Timor. In this thesis I refer to the law, the project and the socio-political responses to law together as 'the rule of law context'.

I commence this chapter by examining the discourse regarding the rule of law 'project' as conceived and implemented in programmes under international auspices. I then survey the development of formal rule of law institutions and programmes in East Timor and discuss the ongoing limitations of the rule of law 'project' in this context. In the next three sections of the chapter I examine broader rule of law context in East Timor through discussing 'choice of law' and access to justice issues as well as the ambivalence of successive East Timor governments to the rule of law framework. I illustrate this ambivalence in four ways: documenting the undermining of the judiciary over an extended period of time, examining 'failures to respond' to critical recommendations for investigation and prosecution, surveying examples of the personal exercise of power by senior East Timor political leadership in contravention of the rule of law, and finally discussing the repeated pattern of foreshadowing and granting of amnesties and pardons. I argue that the combination of these factors contributes to a culture of impunity and undermines the rule of law project. I follow this with a discussion of the practical consequences of the rule of law context for police development in East Timor.

In the next chapter, chapter 5, I examine police development and the security sector reform context in East Timor. Chapters 4 and 5, together, acknowledge that the police, more than any other state-based entity, sit at the intersection of both the rule of law and the security sector context.

4.2 The rule of law project

There is no universally accepted definition of the rule of law. This has not prevented the rule of law from being widely, though not universally, acclaimed across the political

spectrum with E.P. Thompson referring to it as an “unqualified human good” (Thompson 1975: 266). In fact the rule of law is held to be essential for any number of developmental, economic, legal, political and moral outcomes. However, Chesterman (2008: 332) argues that the wide acclaim for the virtues of the rule of law is possible only because of the greatly diverse meanings attached to it. Nonetheless, he attempts a definition that includes the following elements:

First, the power of the State may not be exercised arbitrarily. This incorporates the rejection of “rule of man,” but does not require that State power be exercised for any particular purpose. It does, however, require that laws be prospective, accessible, and clear. Secondly, the law must apply also to the sovereign and instruments of the State, with an independent institution such as a judiciary to apply the law to specific cases. This implies a distinction from “rule by law.” Thirdly, the law must apply to all persons equally, offering equal protection without prejudicial discrimination. The law should be of general application and consistent implementation; it should be capable of being obeyed. This presumes that the rule of law is more than simply “law in the books” and that these principles also apply to “law in action” (Chesterman 2008: 342).

Krygier argues that “universal, institution-based” agreement on what the rule of law constitutes is in fact not possible and that seeking such an answer can in fact confound the state of affairs one is seeking:

For the rule of law to exist, still more to flourish and be secure, many things beside the law matter, and since societies differ in many ways so will those things (Krygier 2009: 47).

The promotion of the rule of law by both bilateral and multilateral donors in post-conflict situations has become ubiquitous, with Krygier (2009: 50) estimating that “in the past 20 years, over a billion dollars has been spent internationally to bring the rule of law to benighted countries thought to need it”. Carothers (1998: 95) contends that “one cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world’s troubles”.

Rule of law programming has evolved from earlier ‘law and development’ initiatives carried out during the 1960’s and early 1970’s.⁷⁷ Contemporary rule of law programming is

⁷⁷ Law and development initiatives relied heavily on US academics and sought to reform judicial and legal systems along US lines in the furtherance of economic development. The ‘law and development’ movement’s demise is attributed to the lack of nuance in attempting to introduce a foreign legal system into a developing country, lack of evidence of its development benefits and a failure to understand and engage with the local context. See e.g. Samuels (2006).

frequently integrated into peacekeeping missions,⁷⁸ often has a focus on institutional development and coincides with other programme approaches that include ‘good governance’ and ‘nation- and state-building’. An assortment of activities is carried out under the rubric of ‘rule of law’, including judicial and legislative development, police reform, and establishing human rights, transitional justice and anti-corruption mechanisms.

Following the end of the Cold War the idea that the rule of law is a precondition for successful and sustainable development emerged from discourse regarding the nexus between security and development. Both security sector reform activities and rule of law activities started to appear as central approaches in post-conflict enterprises under international auspices (DFID 2002: 8; OECD 2007a: 20; McFate 2008: 3). It was also recognised that security sector and justice sector activities and outcomes are interconnected and mutually reinforcing (Call 2007; Scheye 2008). This insight began to be applied to transitional justice activities (Mobekk 2006; Mayer-Rieckh and Greiff 2007). This has resulted in the emergence of development programmes under the rubric of ‘justice and security sector reform’ (JSSR). A number of benefits of taking an integrated approach to the development of legal institutions are claimed. If development of institutions occurs in isolation there is little chance that other components will be able to ‘keep up’. There is little purpose in police carrying out arrests if the legislative framework is not clear, the prosecution service and courts are not functioning or the prisons are not yet built or have inadequate capacity. There are attempts to recognise this connection in design of UN missions, for example, UNMIT includes a position of Deputy Special Representative of the Secretary-General for Security Sector Support and Rule of Law.⁷⁹

The centrality of the rule of law to the work of the UN has been emphasised by the UNSG (United Nations 2004a, 2006f), the President of the Security Council (United Nations 2004c: 1) and in the UN Resolution adopting the World Summit Outcome (United Nations 2005g). In his 2004 report the UNSG articulates “a common language of justice for the United Nations”, defining the rule of law as follows:

The rule of law is a concept at the very heart of the Organization’s mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws

⁷⁸ The UN Security Council first used the words ‘rule of law’ in 1996 in relation to supporting the UNSG’s efforts in Burundi and it has subsequently become part of a significant number of mandates (United Nations 1996).

⁷⁹ Having such a position does not, however, guarantee coherence of efforts in practice. Peake argues that although much policy guidance talks about the importance of integrating security, justice and policing issues, the management and coordination is often fragmented in both bilateral and multilateral programming. He makes particular mention of this phenomenon in relation to UNMIT (Peake forthcoming).

that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (United Nations 2004a: 4).

It is not only the UN that places such import on developing the rule of law in post-conflict countries. Other multilateral organisations such as the World Bank, bilateral and NGO programs similarly make the rule of law central to their international development vision. Large amounts of foreign resources have been allocated to the rule of law venture in transitional or (ostensibly) post-authoritarian countries, yet the successes can only be regarded as modest. Carothers argues

the primary obstacles to such reform are not technical or financial, but political and human. Rule-of-law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be ruled by the law. Respect for the law will not easily take root in systems rife with corruption and cynicism, since entrenched elites cede their traditional impunity and vested interests only under great pressure. Even the new generation of politicians arising out of the political transitions of recent years are reluctant to support reforms that create competing centers of authority beyond their control (Carothers 1998: 96).

A number of criticisms of the rule of law project are prominent. These focus variously on the (neo) imperial underpinnings associated with the rule of law; assumptions regarding the nexus between law and social order, and the value-free, culture-free, politics-free technical approach to the transplantation of rule of law. In relation to both 'empire' and the 'technical approach' Chandler argues that

rule of law promotion imposes an external agenda of regulation at the same time as denying political responsibility through presenting the legislative framework as strengthening the institution of the state being capacity built. External regulation is legitimised independently of the political process of the domestic state but is presented in the depoliticised terms of technical and administrative expertise (Chandler 2006: 166).

Brooks invites us to look closer at the assumption that the rule of law has a necessary correlation with the reproduction of social order or a diminution of violence, arguing that there is little evidence of this (Brooks 2002-2003: 2289). This theme is also taken up by authors who point to the wide range of authorities responsible for social order and the management of conflict and violence in various stateless societies, 'new subsistence societies' and some 'post-conflict' societies, with the state being just one actor among many (Dinnen 2000; Baker and Scheye 2007; Nixon 2008). Nonetheless, it appears that the rule

of law has become part of the ritual language that countries are required to recite as part of being considered a functioning sovereign state.

Carothers expresses his concern that a belief in technical and legal solutions to complex problems is misplaced. This is echoed by Rajagopal, who sees this technical approach as “a desire to escape from politics” (Rajagopal 2007-2008: 1349). Though he supports use of the law Rajagopal contends that the way in which the rule of law is invoked, with its apparently self-evident desirability, serves to obfuscate disparate agendas present in the design and implementation of security, development and human rights agendas.

As I suggested in chapter 1, there is a consensus among many practitioners seeking greater ‘traction’ in rule of law and security sector programs that it is essential to pay attention to the local context and to local ownership. However, in chapter 1 I noted Belloni’s critique of the way local ownership is used by international actors to absolve themselves of responsibility for their own failures to achieve nation-building outcomes. Tondini (2008: 237) makes a similar case that the concept is used as a ‘political umbrella’ to obviate responsibility in relation to restoring justice systems.

In this chapter I examine a case of an institution-based rule of law ‘project’ introduced in to a location with little historical experience of Western notions of the rule of law. The story, however, is not solely a ‘tradition meets modernity’ narrative. As I will argue later in relation to police development, the extent of technical failure and mismanagement in the rule of law ‘project’ in East Timor has become part of the political context. The technical and socio-political aspects are of course, hard to separate. A system of law that suffers from extensive delays and poor function will be shunned not only for its lack of ‘fit’ but also for its technical incompetence, and the two things will operate together rather than separately.

4.3 Rule of law development in East Timor

4.3.1 The initial scope of the task

The extent of destruction faced by UNTAET on its arrival in East Timor in 1999 has already been noted in chapter 3. The judicial system had to contend with an absence of physical infrastructure including court and prison buildings, an absence of legal personnel, the near total destruction of all records, and an absence of legal materials. Not only did UNTAET need to establish a domestic legal system from the bottom up, it also needed to develop transitional justice mechanisms for dealing with the legacies of the Indonesian occupation, in particular the atrocities occurring in the context of the 1999 referendum.

Initially UNTAET believed that only ten qualified lawyers remained in East Timor.⁸⁰ Ultimately sixty East Timorese, all with Indonesian legal training, were located. Finding these lawyers was not a straightforward matter and was achieved by a combination of word of mouth and the dropping of leaflets from UN planes. However, very few of the lawyers located had practical experience (Strohmeyer 2000: 263-264). Although in other parts of the UNTAET administration international staffs were installed in high level positions as required, a decision was made to appoint East Timorese as judges, prosecutors and public defenders from the outset. This decision placed the inexperienced judicial personnel in an invidious position, meanwhile hobbling the development of the judicial system (Bowles and Chopra 2008: 287). The lack of experience of the new judicial personnel was exacerbated by the decision to use the largely unfamiliar Portuguese language for all judicial matters, and the requirement to immediately adjudicate highly complex cases coming before the Special Panels for Serious Crimes (SPSC) (Bowles and Chopra 2008: 287, 289).

A decision had to be made on the applicable law for East Timor. Section 3 of UNTAET Regulation 1/1999 stated that the law which applied before 25 October 1999 in East Timor would continue to operate in so far as it was not inconsistent with international human rights standards or with later legislation passed by the administration.⁸¹ This was understood to mean Indonesian law;⁸² however, it was ten months after the start of the mission before a full set of Indonesian legislation was available, resources were never sufficient to enable comprehensive translation, and few international personnel in the UNTAET mission had Indonesian language skills. A large amount of discretion had to be exercised by individual police officers to determine what aspects of the Indonesian Criminal Code applied (Devereux 2005: 302). In the post-independence period problems still occurred with judges applying arguably non-applicable parts of the Indonesian Criminal Code (Sections 106 and 107) to sentence people for the crime of “*makar*” or subversion (JSMP 2005a).

4.3.2 Responsibilities

Since 1999 successive UN missions and agencies in East Timor have had primary responsibility for justice sector and legal development activities (Freedom House, American

⁸⁰ All Indonesian lawyers had left East Timor by this time.

⁸¹ Certain Indonesian laws were declared immediately inapplicable.

⁸² Although the intention of the drafters was that Indonesian law would apply, a period of uncertainty occurred when the Court of Appeal declared, in the Case of Armando dos Santos in 2003, that Portuguese law was the applicable subsidiary law. See JSMP (2003a). The National Parliament realised the legal chaos that would ensue and passed Law No 10/2003 (Interpretation of Section 1 of Law No. 2/2002, of 7 August, and Sources of Law). This reinstated Indonesian law as the applicable law.

Bar Association Rule of Law Initiative, and USAID 2007: 16).⁸³ Most assistance is provided to the East Timorese government: the Ministry of Justice, the Office of the Prosecutor-General, the Public Defender's Office, the Office of the Provedor, Office of the Inspector General, the courts, the Land and Property office, the parliamentary committees and the Prison Services. Assistance to development of the justice sector is also provided to various local and international organisations including NGOs, religious institutions, academic groups, professional associations and media organisations (Freedom House, American Bar Association Rule of Law Initiative, and USAID 2007: 47-49).

Commencing with the establishment of the Transitional Judicial Service Commission (TJSC) in 1999,⁸⁴ East Timorese have been involved in the development of their judicial system. The purpose of the TJSC was

to recommend to the Transitional Administrator candidates for provisional judicial or prosecutorial office, provide advice on the removal of judges or prosecutors, and prepare a Code of Ethics for judges and prosecutors.⁸⁵

The TJSC was chaired by an East Timorese⁸⁶ and comprised five individuals, three of whom were East Timorese.⁸⁷ From May 2002 the East Timorese government took formal control of the development of the judicial system through the Ministry of Justice and the relevant statutory bodies such as the Superior Council of the Judiciary (SCJ). This was supported by continuing financial and programmatic contribution from multilateral and bilateral donors as well as by provision of international personnel.

4.3.3 Transitional justice mechanisms

Transitional justice is defined as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (United Nations 2004a: 4). The UN has provided support for international and mixed tribunals to address past crimes, truth commissions and reparations programmes as well as support for domestic justice sector development.

⁸³ There has also been significant bilateral programming from AusAID, USAID, NZAID, Royal Norwegian Ministry of Foreign Affairs, Portuguese Development Cooperation, Community of Portuguese Language Countries (CPLP); and assistance from universities (University of San Francisco) and international NGOs (International Commission of Jurists, International Development Law Organisation, National Democratic Institute).

⁸⁴ UNTAET Regulation 3/1999.

⁸⁵ Article 1, UNTAET Regulation 3/1999.

⁸⁶ Article 2.2 UNTAET Regulation 3/1999.

⁸⁷ Article 2.1 UNTAET Regulation 3/1999.

In 1999 the UN established the International Commission of Inquiry in order to carry out a comprehensive investigation on the atrocities that occurred in East Timor in 1999. The Inquiry found “a pattern of serious violations in East Timor of fundamental human rights and humanitarian law” and recommended the establishment of an international Tribunal under UN auspices (OHCHR 2000). The KPP-HAM (*Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor Timur*) investigation by the Indonesian Human Rights Commission (KOMNASHAM) came to similar conclusions regarding violations of human rights and also recommended establishing a Fundamental Court of Human Rights “with the authority to try cases of human rights violations as defined in national and international human rights and humanitarian law” (KPP-HAM 2000: 58).

The Indonesian government responded quickly to these recommendations, establishing the Ad-Hoc Human Rights Tribunal in Jakarta. This resulted in the UN putting on hold recommendations for an International Tribunal. The work of the Ad-Hoc Human Rights Tribunal suffered from a myriad of deficiencies and was widely regarded as an attempt to avoid the establishment of an International Tribunal.⁸⁸

In the mean time UNTAET established the SPSC as a hybrid tribunal within the Dili District Court and the Serious Crimes Unit (SCU) within the Office of the Prosecutor-General of East Timor.⁸⁹ Although the regulation provided the SPSC with ‘universal jurisdiction’,⁹⁰ the SPSC suffered from major jurisdictional problems, as most of those indicted were in Indonesia and the court had no powers of extradition. This meant that in the main those convicted by the court were low-ranking East Timorese militia, while higher ranking officials and architects of the crimes against humanity escaped prosecution.

Perhaps the most comprehensive evaluation of the serious crimes process is to be found in David Cohen’s (2006) report “Indifference and Accountability: The United Nations and the Politics of International Justice”. The report was written following the UN decision to wind up the Serious Crimes process before its task was finished, in order that the process

⁸⁸ Accounts of the flawed Ad-Hoc Tribunal process can be found in Cohen (2003) and Amnesty International and JSMP (2004).

⁸⁹ The SPSC were given exclusive jurisdiction for serious crimes committed between 1 January 1999 and 25 October 1999 including (a) Genocide, (b) War Crimes, (c) Crimes against Humanity, (d) Murder, (e) Sexual Offences, and (f) Torture. UNTAET Regulation 2000/15 On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences.

⁹⁰ UNTAET Regulation 2000/15, Section 2.2 states that for the purposes of the present regulation, “universal jurisdiction” means jurisdiction irrespective of whether: (a) the serious criminal offence at issue was committed within the territory of East Timor; (b) the serious criminal offence was committed by an East Timorese citizen; or (c) the victim of the serious criminal offence was an East Timorese citizen.

would end at the same time as the UNMISET mission. In the report Cohen (2006: 4) argues that the problems of the serious crimes process could be summarised as “lack of commitment, resources, management, and accountability” on the part of both the UN and the government of East Timor. He concluded that

the process was so deeply flawed from the beginning that, despite the important and successful efforts of key individuals to make structural improvements, egregious problems remained until the very end. These problems are serious enough to at least call into question whether important aspects of the process as a whole met international standards. Further an analysis of the impact of these problems upon trial and appellate proceedings and Judgements provides substantive grounds for questioning the basic fairness of a significant number of the Serious Crimes Trials, the adequacy of the appeals process, and, hence, the legitimacy of some of the ensuing convictions (Cohen 2006: 1).

In addition to the serious crimes process UNTAET established the Commission for Reception, Truth and Reconciliation (CAVR).⁹¹ The Commission reported in 2006. The *Chega!* Report is a comprehensive account of the history of the occupation of East Timor by Indonesia, covering self-determination, killings and disappearances, forced displacement and famine, detention and torture, violations of the laws of war, political trials, sexual violence, violations of the rights of the child, and violations of economic and social rights. The report makes extensive recommendations on the way the East Timor government can support human rights and accountability and promote prosecutions, reparations and recognise the attendant responsibility of the international community (CAVR 2005: Section 11).

In 2005 Indonesia and East Timor established the Truth and Friendship Commission (CTF) with the following objective: “To establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events” (Republic of Indonesia and Democratic Republic of Timor-Leste 2005). International and East Timorese civil society organisations were highly critical of the CTF,

⁹¹ Section 3.1 of UNTAET Regulation 10/2001 defines the objectives of the CAVR. The objectives of the Commission shall include: (a) inquiring into human rights violations that have taken place in the context of the political conflicts in East Timor; (b) establishing the truth regarding past human rights violations; (c) reporting the nature of the human rights violations that have occurred and identifying the factors that may have led to such violations; (d) identifying practices and policies, whether of State or non-State actors which need to be addressed to prevent future recurrences of human rights violations. (e) the referral of human rights violations to the Office of the General-Prosecutor with recommendations for the prosecution of offences where appropriate; (f) assisting in restoring the human dignity of victims; (g) promoting reconciliation; (h) supporting the reception and reintegration of individuals who have caused harm to their communities through the commission of minor criminal offences and other harmful acts through the facilitation of community based mechanisms for reconciliation; and (i) the promotion of human rights.

in particular of its power to recommend amnesty, and the UN refused to participate in the process. The CTF presented its final report in July 2008. Much to the surprise of many of CTF's critics the report found, like the many reports before it, that Indonesian military, police and civilians had committed crimes against humanity during 1999. An analysis of the report conducted by the ICTJ concluded that many of the findings of the report were positive, but that a number of significant weaknesses were evident, and that the question of institutional responsibility had not been adequately dealt with (Hirst 2009: 6-7).

4.3.4 Domestic justice system

East Timor's domestic courts were established by UNTAET Regulation 11/2000, which envisaged eight courts of first instance and a Court of Appeal. The number of first instance courts was reduced to four by UNTAET Regulation 25/2001. As at early 2009 only one of these courts functions regularly (Dili), one mostly regularly (Baucau), and the Suai and Oecussi courts function rarely. The Court of Appeal functions regularly, although there was a period in 2002 and 2003 when it did not function for over 18 months (Human Rights Watch 2005). Initially it had been hoped that the presence of the hybrid SPSC, under international auspices, would provide positive modelling for the establishment of the domestic judicial system, but this proved not to be the case as all courts struggled to establish and function.

4.3.5 Outcomes

After ten years of international and national efforts the formal justice system remains weak.⁹² Many technical issues still beset the functioning of the judicial system, including a lack of trained Timorese legal personnel, delays in appointing or renewing the contracts of international legal personnel, multi-sourced law that is not always translated and is often inconsistently applied, the intermittent functioning of the district courts outside Dili, and increasingly well documented examples of political interference with judicial function. The

⁹² There are a plethora of reports that come to this conclusion. See e.g. Kings College (2003), UNDP (2007), Freedom House, American Bar Association Rule of Law Initiative, and USAID (2007). For a 2009 assessment of the challenges still faced in developing the justice system see Independent Comprehensive Needs Assessment Team (2009).

tendency for political interference is exacerbated by poor appreciation of the requirement for separation of powers.⁹³

The Review of Peace Operations conducted by King's College in 2003 criticised UNTAET for its piecemeal approach and for failing to carry out detailed planning that would have enabled a coordinated approach to developing the justice system, as well as for carrying out what they termed ill conceived training and neglecting the area of legal policy development. The Review concluded that "the resultant lack of clarity and consistency cast doubt on UNTAET's own commitment to the rule of law" (King's College 2003: Para x.).

The fundamental contradictions in the executive authority embodied in the establishment of the UNTAET mission and its mandate to prepare East Timor for democratic self-governance have been noted by a number of authors. It has been argued that UNTAET's obsession with maintaining control led to policies that: "consistently have underemphasized local participation and capacity-building with the effect of compromising the strategic objectives of democracy, effective administration, and rule of law" (Beauvais 2001: 1106). A former senior administrator within UNTAET also noted that their style of governance replicated Indonesian authoritarian models, and that the unfettered control of the Transitional Administrator was more akin to that of a "pre-constitutional monarch in a sovereign kingdom" (Chopra 2000: 29).⁹⁴ It is clear that the history of the personal exercise of power in East Timor, which was reinforced both by the Portuguese colonisation and the

⁹³ The capacity of then Prosecutor-General, Longuinhos Monteiro, to carry out investigations and prosecutions impartially and without political interference was raised as a matter of concern by two UN reports. The Commission of Experts to Review the Prosecution of Serious Violations of Human Rights (the 2005 report) noted that the Prosecutor-General believed that his accountability to the President under the Constitution required him to follow the policy of the latter in relation to prosecutions and concluded "that there is sufficient evidence to conclude that the Office of the General Prosecutor does not at present function independently from the State of Timor-Leste" (United Nations 2005f: 25).

The CoI report into the violence of April/May 2006 also noted that they had received reports regarding political interference with investigations and prosecutions into these events, as well as a selectivity of approach brought about through political pressure. In reference to the 2005 report the Commissioners were of the opinion that the situation in relation to the Prosecutor-General remained unchanged (United Nations 2006a: 67-68).

It is of note that Longuinhos Monteiro was appointed General Commander of the PNTL, a matter that has caused some concern as further questions have been raised regarding the integrity of the Prosecutor-General. On 25 August 2005 Francisco Lui complained in the newspaper *Diario Tempo* about corruption of three prosecutors, including Longuinhos Monteiro receiving money amounting to US\$8,600. Lui was subsequently sued for defamation by Monteiro but on 21 January 2009 the Dili District Court ruled on the defamation case, clearing the defendant Francisco Lui of the charges.

⁹⁴ De Mello was also aware of the contradictions of his power, noting that "the Administrator is authorized to impose directives and policies as well as to use force more or less at will. There is no separation of the legislative or judicial from the executive authority. There are no positive models on how to exercise such broad powers . . . the question remains open how the UN can exercise fair governance with absolute powers in societies recovering from war and oppression" (de Mello in 2000 quoted in Beauvais 2001).

Indonesian occupation, was then further bolstered by the UNTAET administration, with resonances evident in the oligarchic style of government now present in East Timor.

In addition to bequeathing a specific governance style, examples of UN ambivalence about the rule of law can also be found. This was evident in 2004 when the UN absolved itself from responsibility for the Wiranto warrant, discussed above, once it became clear how contentious it was with the East Timorese government (de Bertodano 2004: 913-916). Similarly the UN's commitment to pursuing the rule of law was brought into question in 2008 when UNDP hired former Minister of Defence, Roque Rodrigues, as a Presidential Security Adviser. Rodrigues had been recommended for prosecution by the Commission of Inquiry in 2006 for illegally arming civilians, but it became clear early on that the government did not intend to pursue the matter (United Nations 2006a: 51). Rodrigues' appointment reportedly occurred on the recommendation of President Ramos-Horta, Prime Minister Xanana Gusmão and former FRETILIN Prime Minister Mari Alkatiri (Fitzpatrick 2008). The UN SRSG in East Timor, Atul Khare, was placed under considerable pressure from UN Headquarters to sack Rodrigues, but ultimately allowed him to save face by resigning in June 2008 (Fitzpatrick 2008). However, as at February 2009, Rodrigues was still attending meetings of the President's Coordinating Committee for the Reform and Development of the Security Sector in his role as part of the Committee (Office of the President of the Republic 2009).

In chapter 7 I discuss the UN's acquiescence to the East Timor government's placing of East Timor's police under control of the military at a time when the UN was supposed to have supervisory authority over PNTL, and the 'covering' for the Joint Command's breaches of the legal rights of arrestees to representation during the states of exception. In early 2009 when East Timor's Court of Appeal found that the Supplementary Agreement between the East Timor government and UNMIT was unconstitutional as it had not been ratified by the Parliament, it produced legal uncertainty for the entire police screening and certification process (Wilson 2009). UNMIT decided first to ignore the decision of the Court of Appeal and subsequently play down its importance. In a climate where the East Timorese government frequently proclaims the irrelevance of the courts and questions the authority and decisions of judges, the (in)action of the UN in this regard gives further support to that practice.

In September 2007, an independent evaluation was carried out of UNDP's Strengthening the Justice System Program, the largest justice assistance project for East Timor. It concluded that despite some notable contributions the programme has not made a

significant impact on access to justice in East Timor, and that the goal of having district courts fully operational, efficiently managed and delivering judicial services had not been achieved. In fact, they considered two of the four courts (Suai and Oecussi) non-operational. Revealingly, the evaluation discovered that the Suai District Administrator was unaware that there had been a court in his district since Indonesian times (UNDP 2007: 53).⁹⁵

Decisions undertaken by East Timorese authorities in relation to judicial system development after independence have also frequently been the subject of criticism. It is significant that many of these decisions and processes were supported by the UN missions and UNDP, as will be detailed below. On 27 February 2004 the SCJ announced that the language of the courts would be exclusively Portuguese, although the Constitution mandated both Tetum and Portuguese as official languages. At the time it was estimated that only five percent of the population spoke Portuguese. The decision was widely criticised, with local NGO JSMP arguing that the directive might be unconstitutional and was certainly outside of the mandated competency of the SCJ (JSMP 2004a). The decision had many far reaching and cascading consequences, hobbling both access to justice and the development and functioning of the nascent judicial system. The language policy causes difficulties in notifying parties to legal proceedings, in completing criminal investigations, in consulting on draft legislation, it provides barriers to those wishing to enter the legal profession, and hinders trial processes and functions of the courts more broadly. It has been reported that there are waiting times of up to nine months for translation and interpretation services (UNDP 2007: 11, 40).

By early 2009 some positive developments had taken place in the judicial system, including improved facilities and equipment at both Dili and Baucau District Courts. However problems remain, including inadequate facilities at Suai District Court, a high number of cases pending, the slow progress of cases, inadequate number of judges, prosecutors and public defenders for the case load, the inadequate number of new trainee judicial

⁹⁵ The evaluation looked at some of the reasons for these failures and found that the programme had not provided the necessary framework to facilitate long term strategic planning and that justice sector coordination remained weak; that the programme had not facilitated an effective long term process of human resource (HR) planning and that the current HR plan prepared with UNDP support was inadequate to ensure eventual self reliance; that the establishment of streamlined case management systems had not been achieved; that neither the UNDP programme nor the justice sector institutions had considered the interface between access to justice, the formal justice system and traditional justice sector institutions; and that legislative drafting remained reliant on international advisers. It also found that promotion of legal awareness and the provision of public information is one of the weakest components of the programme, noting that little progress had been made on implementing the communications strategy devised in 2006 and that the public information officer focussed only on dissemination of English language information about UNDP activities (UNDP 2007).

personnel, uncertainty regarding contractual arrangements for international judges, difficulty in obtaining information such as statistics from the Dili Court (JSMP 2009). Interviews with judicial personnel conducted in July 2008 indicated that East Timor suffers from a large backlog of both criminal and civil cases, with great uncertainty on how many thousands of cases are sitting in the Office of the Prosecutor-General. Incomplete legislative development has contributed to a mosaic of legislation that is difficult for court actors to comprehend and apply. The use of the Indonesian Criminal Code in conjunction with the East Timorese Criminal Procedures Code was necessary due to the lag of several years before the East Timorese Penal Code would enter into force. This caused considerable confusion, with widely differing interpretations by court actors about what legislation should be applied (JSMP 2006a). Although the Indonesian Civil Procedure Code, the Indonesian Criminal Procedure Code and the Indonesian Criminal Code have all now been replaced by new East Timorese legislation,⁹⁶ in fieldwork in July 2009 I encountered both UNPOL and PNTL members continuing to use the Indonesian legislation.

In considering the development of the rule of law in East Timor it is important to discuss not only the formal institutional framework but also the culture and attitude surrounding the rule of law. This is done in the following three subsections of this chapter.

4.4 Choice of law and legal pluralism

Neither the UN nor the first East Timorese government, consisting mainly of returning members of the diaspora, were familiar with the array of existing institutions and processes that could have been built on in developing the rule of law institutions (Bowles and Chopra 2008: 277). These institutions were to be found in local 'legal' and dispute resolution processes and resistance structures as well as in familiar Indonesian administration systems. Building everything from the beginning with unfamiliar institutions meant an opportunity was lost to engage East Timorese with the broader state-building project, with a long-lasting failure to establish the legitimacy and function of those institutions.

As discussed in chapter 3, East Timor continues to be characterised by significant legal pluralism. People decide to approach either the formal legal system or an aspect of non-formal legal systems, based on considerations of availability, cost, fairness, level of understanding of how the system works, and comfort with the underlying operating principles of the system. Sometimes one system is approached and, if the response or

⁹⁶ Decree Law 13/2005 Approving the Criminal Procedure Code, Decree Law 1/2006 Approving the Civil Procedure Code Decree and Law 19/2009 Approves the Penal Code.

outcome of the initial approach is considered unsatisfactory, then another will be approached.

In the districts and subdistricts of East Timor access to a functioning court will tend to be the exception rather than the rule. This is because courts do not sit for long periods of time; key personnel including judges, prosecutors and defenders are often absent, and there are lengthy delays in schedules. For the police and the public, the ability to get to court depends on availability of transport and the conditions of the roads. In some districts, like Oecussi, there are no detention facilities, making arrest problematic or more often temporary. In other districts police will have no money to feed detainees, so that either they must be released or their families must provide for them in detention. Even in the larger towns of Dili and Baucau the variable functionality of the formal legal system coupled with poor understanding of how it operates will see people opt for more accessible means of resolving problems.

4.5 Ambivalence and reticence

A commitment to the rule of law is cited in the Constitution of East Timor,⁹⁷ in planning documents such as the National Development Plan,⁹⁸ and in subsequent legislation including the Law on Internal Security (Law 8/2003), Law Approving the Statute of the Office of the Ombudsman for Human Rights and Justice (Law 7/2004) and in the Law Authorizing the President of the Republic to Declare a State of Siege (Law X/2008).⁹⁹

The IV Constitutional Government Program 2007-2012 makes extensive reference to the rule of law. This is manifest not only in generic commitments to the rule of law but is also explicitly referred to as a way of enhancing the State's authority and dealing with a perceived general sense of impunity:

the guarantee of full compliance with the courts' decisions is also a fundamental element of the principle of Rule of law and of the citizens' freedom. In fact, by battling the sense of impunity of offenders and the society in general, the authority of the State and of the Institutions is emphasized (Democratic Republic Of East Timor and Presidency of the Minister's Office [sic] 2007: 65).

⁹⁷ Section 1 (1) of the Constitution states "the Democratic Republic of East Timor is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and the respect for the dignity of the human person".

⁹⁸ The National Development Plan includes rule of law as part of its vision: "The state will be based on the rule of law. Government, private sector, civil society and community leaders will be fully responsible to those by whom they were chosen or elected (Planning Commission Dili 2002: xviii).

⁹⁹ Although this law was passed and promulgated it does not appear to have a number.

The difficulties in establishing rule of law in East Timor occur due to constraints in the formal apparatus and institutions of the law, as well as the pluralistic nature of law in East Timor. However, these more tangible difficulties are accentuated by a lack of commitment of the political leadership to a culture of rule of law. An analysis of statements and actions of members of successive governments of East Timor indicates a deep reticence and ambivalence towards this process. This ambivalence manifests in highly contradictory, and sometimes alternating, positions about the rule of law and the function of the courts. The lack of sustained commitment is also evident in the extensive failures to give suitable support to probationary judicial actors and sustained undermining of court actors.

This ambivalence is manifest in lack of support for the prosecution of serious crimes cases from 1999 and failure to respond adequately to the recommendations of prosecution from the Independent Special Commission of Inquiry in relation to the violence associated with the crisis of April/May 2006. It is also evident in deep reluctance on the part of the political elite to debate the recommendations of the CAVR and the CTF in parliament. From a different perspective it is evident in the way that the political leadership sees exercising arbitrary personal, rather than institutional, power as a (more) legitimate problem solving approach. Further evidence of this arbitrary exercise of power is seen in the approach to amnesties and pardons in East Timor.

4.5.1 Speaking ill of the judiciary and political interference

The judicial system in East Timor is undeniably weak; however, this is compounded by the political leadership regularly undermining the judiciary for political expedience. This takes the form of public denouncements of judicial personnel and decisions and ignoring decisions of the courts. This in turn further undermines development of rule of law.

In order to illustrate my contention I commence this section with an account of the assessment of already serving East Timorese judges to determine their suitability for permanent appointment prepared by David Cohen, director of the Berkeley War Crimes Studies Center (Cohen 2006: 93-105). Cohen details how all twenty-two probationary judges, including the four who had been serving in serious crimes cases, underwent an examination of 'basic competency' in mid-2004. The announcement that all judges had failed was not made till the end of January 2005.¹⁰⁰ International judges serving on the SPSC were deeply shocked by what they saw as the dissonance between the East Timorese judges' positive performance and the outcomes of the exams. Cohen reports many

¹⁰⁰ A similar process occurred for probationary prosecutors and defenders. In that process the exam was administered in November 2004 but the announcement of universal failure was not made till June 2005.

extraordinary aspects of this process which was devised by Judge Claudio Ximenes, a Portuguese Timorese judge appointed by UNDP.¹⁰¹ The basic competency exam covered Indonesian law and UNTAET regulation, but Judge Ximenes had no knowledge of Indonesian law, the examination paper was “rife with translation errors, typographical errors, and serious editorial mistakes....many of them serious enough to interfere with the ability of the examinee to answer correctly”; and although the exam could be completed in either Portuguese or Tetum, it was graded by people who only spoke Portuguese. In an interview with Cohen Judge Ximenes stated “that he knew with absolute certainty that every one of them would fail because they were all incapable and incompetent” (Cohen 2006: 96). Judge Ximenes did not explain how this was consistent with the fact that prior to the exam he had appointed and reappointed the judges and had been responsible for their mentoring, as well as reviewing their decisions.

The story at this stage becomes even stranger. Following their failure and the SCJ realisation that the country no longer had any working judges, the probationary judges were required to simultaneously work full-time as judges and attend morning and afternoon classes at the Judicial Training Center (JTC), with serious consequences for missing classes. Here they were trained in Portuguese (not Timorese) law by Portuguese judges (with no experience in training) in Portuguese language without translation (although translation had been offered). Most East Timorese judges, like the rest of the population, did not have proficiency in Portuguese language. Reportedly the trainers disparaged the probationary judges as “stupid”, “ignorant”, “incapable of learning”, and as “savage misfits”. The program at the JTC was developed, financed and administered by UNDP. Cohen’s interview with UNDP’s Coordinator of the training programme, Ana Graca, is revealing:

She stated that the UNDP not only recognized but also fully approved and supported that failing the judges on the examination was a tool used to force the trainees to exclusively use Portuguese (Cohen 2006: 102).

This story regarding certification of East Timor’s judges illustrates not only the damage done by the language directive itself but also the damage done by the government’s ideological commitment to all things Portuguese. Cohen argues that the UN is implicated in this disaster through their failure to monitor and evaluate the work of their staff and the nature of their programs. This position was supported by the Independent Evaluation of the UNDP Access to Justice Program conducted by external evaluators in 2007, who

¹⁰¹ At this time Judge Ximenes was President of the SCJ, Chairman of the Evaluation Committee of the National Trainee Prosecutors, Chairman of the Evaluation Committee of the National Trainee Public Defenders, Member of the Council of Coordination for the Justice Sector, and Member of the Executive Board of the Judicial Training Center and a member of its Executive Committee (Cohen 2006: 95).

expressed concern regarding monitoring, evaluation and accountability of the UNDP program (UNDP 2007: 14).

It was June 2007 before twenty-seven national judges, prosecutors and public defenders were appointed following two and a half years of training (UNDP 2007: 43). However, this did not mark the beginning of a greater placement of trust in the judicial system by the political leadership, as indicated in a 2009 report from ETAN:

The President, Prime Minister, and President of Parliament made comments intended to discredit the authority and competence of the judicial system. Prominent officials also regularly made comments during the year intended to influence who should and should not be prosecuted for, among other incidents, the attack on the President in 2008 and the events of 2006 (ETAN and WPAT 2009).

A number of decisions of the courts, including constitutional validity, have been ignored by successive governments in East Timor. These include the adoption of the Immigration and Asylum Law in 2003 by East Timor's Parliament, disregarding the decision of the Court of Appeal that parts of the Law were unconstitutional (JSMP 2003e). Another decision that has received much publicity relates to the November 2008 decision of the Court of Appeal in relation to the 2008 State Budget. In the case brought by sixteen members of Parliament the Court of Appeal unanimously ruled that some aspects of the Budget were unconstitutional. The Court found that

the \$240 million dollar Economic Support Fund violates Timor-Leste's Constitutional prohibition against secret budgets (Article 145.2) and Parliament's power to oversee budgetary operations (Articles 95.2(q) and 115(d)).

The Budget's withdrawal of \$290.7 million more than the Estimated Sustainable Income (ESI, \$396.1 million) from the Petroleum Fund is illegal because it violates the 2005 Petroleum Fund Law's requirements that petroleum resources must be managed for the benefit of current and future generations. The government failed to meet the requirements of Articles 8 and 9 of that law to provide a detailed explanation of why it's in Timor-Leste's long-term interests to spend more than the ESI (La'o Hamutuk 2008).

The decision of the Court of Appeal was widely reported as having been 'rejected' and 'questioned' variously by the President, the President of the Parliament and the Prime Minister.¹⁰² The Prime Minister stated that he would continue to use the money from the

¹⁰² Also of significance is that on the same day that the National Parliament received notification of the ruling by the Court of Appeal the SCJ immediately took a decision not to renew the contract of the principal author of the Court of Appeal decision, Portuguese Judge Ivo Rosa. This SCJ decision was overturned by the Court of Appeal (Court of Appeal Proc No. 01/P. Cautelar/2008) upholding an appeal by Judge Rosa, who argued

petroleum fund regardless of the Court of Appeal's decision on the unconstitutionality of the Supplementary Budget (Tchailoro and Gemcy 2008).

4.5.2 Failures to respond

The undermining of the judicial system by the political leadership is also evident in a pattern of what I call 'failing to respond'. In 'failing to respond' I include ignoring decisions made by the Court of Appeal on constitutional validity, as discussed above, as well as failing to initiate recommended investigations and prosecutions and 'going slow' on those cases that have been initiated. This will be discussed briefly in relation to the operation of the SPSC, the findings of the CAVR (the Chega! Report) and the findings of the CTF. The same phenomenon is identifiable in responses to the recommendations of the 2006 Independent Special Commission of Inquiry.

The CAVR and CTF reports

CAVR delivered its final report to President Xanana Gusmão on 31 October 2005. The President delivered the report to the East Timorese Parliament and Prime Minister Mari Alkatiri on 28 November 2005. At the time of the release of the final report of CAVR it was reported that

The Presidents of East Timor and Indonesia [Susilo Bambang Yudhoyono] agreed yesterday to publicly ignore the conclusions of a damning UN-sanctioned report that found that Jakarta committed war crimes during its 24-year occupation of the former Portuguese colony (Powell 2006: 13).

In the same article it was reported that then East Timor Foreign Minister José Ramos-Horta

criticised the report's recommendations as 'outlandish'; with no connection to reality. Both the respective Presidents reiterated that the Truth and Friendship Commission was their preferred method of moving forward (Powell 2006: 13).

This contributed to the already widespread impression that impunity was the goal of the CTF.

that the SCJ unlawfully and unconstitutionally decided not to renew his contract of service in East Timor. The Court of Appeal was critical of Judge Rosa's removal: "The decision made is clearly an arbitrary one and is contrary to the law", noting that "The circumstances and the manner in which the decision was made allowed it to appear in the eyes of the media, and to be conveyed by the latter, as a decision that was motivated by political reasons, linked to the decision made earlier on by the applicant, a situation that affects the good image of the Superior Council for the Judiciary itself in its capacity as an organ that has the obligation to ensure that the judges are not penalized by their decisions so that they can exercise their functions with independence and impartiality".

It is useful at this point to draw attention to the words of Aniceto Guterres Lopes, Chair of CAVR, in the Preface of *Chega!*, regarding the provenance of the report:

Because the result of this labour is a Report that touches on many difficult issues and sensitivities, it is important to remind ourselves that the CAVR was officially commissioned to do this work. The Commission's tasks were defined in law, written into the Constitution, endorsed by the current Parliament on more than one occasion and were supported by the United Nations and the international community (CAVR 2005).

On 5 June 2008 Committee A of the National Parliament unanimously approved a resolution that the *Chega!* Report be tabled in the next plenary session of Parliament for consideration and debate. The report went on to describe the delays in debating the report as “a matter of increasing concern”. In November 2008 Parliament postponed debating the report again to an undetermined future date (OHCHR and UNMIT 2008: 14). By November 2009 the report had still not been debated, over four years after it was received by Parliament.

On 9 October 2008 the report of the Truth and Friendship Commission (CTF) was presented to Parliament by President Ramos-Horta. The debate of this report has similarly been delayed.

The 2006 crisis

In April and May 2006 East Timor experienced a major security crisis which saw fighting between and within the police and the military, the displacement of 150 000 people, and the calling in of foreign forces to restore order. This is detailed in Chapter 6. Following the crisis Senior Minister and Minister for Foreign Affairs and Cooperation of East Timor, José Ramos-Horta, wrote to the UNSG inviting him to “establish an independent special inquiry commission” to “review the incidents on 28 and 29 April and on 23, 24 and 25 May, and other related events or issues which contributed to the crisis” (United Nations 2006a: 10).

The Report recommended the prosecutions of sixty-eight people and the further investigation of seventy others (Wilson 2008). These people included the Minister of the Interior, Rogerio Lobato; the Minister for Defence, Roque Rodrigues; and the Chief of the Armed Forces, Brigadier-General Taur Matan Ruak. The General Commander of the PNTL, Paulo Martins, was also named in the report for distributing weapons in 2006 and abandoning his command but was not specifically recommended for prosecution.

Both the Chief of the Armed Forces, Brigadier Taur Matan Ruak, and former Defence Minister, Roque Rodrigues, although recommended for prosecution by the Commission of Inquiry, enjoy immunity from prosecution as members of the East Timorese Superior Council of Defence.¹⁰³ This immunity can be lifted by the President. However, in an interview with Radio Australia in October 2008, President Ramos-Horta stated that he thought there were other priorities facing the Prosecutor-General (ABC Asia Pacific 2008). Following the release of the Commission of Inquiry report, it was quickly made clear that the Chief of the Armed Forces, Taur Matan Ruak, had the confidence of the leadership and no prosecution of him would be entertained. The former Minister for Defence, Roque Rodrigues, is currently serving on the Presidential Security Sector Working Group. Former General Commander PNTL, Paulo Martins, who was found to have distributed weapons to civilians during 2006, now serves as a Member of Parliament within Xanana Gusmão's AMP coalition government.

The former Minister of the Interior was sentenced for the crime of murder, in violation of Article 338 of the Indonesian Penal Code, as well as 4 years imprisonment for crimes in violation of Section 4.7 of UNTAET Regulation 5/2001 on Firearms, Ammunition and Explosives. However, after applying the principle of subsidiarity, his sentence amounted to seven and a half years (JSMP 2007a). After serving five months of his sentence Lobato was released to enable him to undertake medical treatment in Malaysia on condition that he return once treatment was completed, which did not happen. While in Malaysia Lobato was one of ninety-four people pardoned by the President upon arriving back in East Timor from Australia, where he had been recovering from gunshot wounds sustained in the attack of 11 February 2008.¹⁰⁴

As at August 2009 some limited progress had been made on the recommendations of the Commission of Inquiry. Cases appear to have progressed following OHCHR funding an international prosecutor to work specifically on those cases. Yet enforcement of sentences remains problematic. The four F-FDTL members convicted of manslaughter and attempted manslaughter of eight PNTL members are held at an *ad hoc* military facility in Tasi Tolu rather than a prison.¹⁰⁵ Although the court has ordered restitution to the widows

¹⁰³ Law on the Superior Council for Defence and Security Law 2/2005. Article 7(2) states: "Members of the Superior Council for Defence and Security may not be arrested or detained without authorization from the Council, except in the case of flagrante delicto in connection with the commission of an offence punishable by a term of imprisonment exceeding two years".

¹⁰⁴ Presidential decree 53/2008 dated 19 May 2008. Presidential Pardon of 20 May.

¹⁰⁵ In an interview with an East Timorese security analyst in Dili in July 2009 he noted that the sentenced F-FDTL members are not actually 'held' at the facility. They are frequently seen around Dili and are telephoned to return to Tasi Tolu if an official visit is impending.

of the victims, this has not been paid. The perpetrators, however, continue to receive their salaries from the F-FDTL while in detention (United Nations 2009a: 9).

4.5.3 Utterances of power

There are many examples of the political leadership in East Timor opting for inappropriate exercise of personal power in contravention of the rule of law. This has occurred across the political spectrum and under both FRETILIN and AMP governments. The examples below relate to senior members of the East Timorese political leadership; former Prime Minister Mari Alkatiri, former Minister of the Interior Rogerio Lobato and Prime Minister Xanana Gusmão, although the phenomenon is much more widely spread.

Mari Alkatiri and the case of Wong Kee Jin

In April 2003 a Malaysian business man, Wong Kee Jin, was arrested by East Timorese police on the order of Prime Minister, Mari Alkatiri. This followed a reported altercation at Wong's scrap yard after Secretary of State for Commerce and Industry, Arlindo Rangel, and Mari Alkatiri arrived after hours demanding to see Wong's business licence. Wong claims he was kicked and abused by Alkatiri's bodyguard. At this point in time there was no mechanism to obtain the licence from the East Timorese government that was being demanded, although Wong held a current licence that had been issued by the UNTAET administration. It was widely held that Alkatiri regarded Wong as a competitor in the scrap metal business. No warrant was issued for Wong's arrest and UN police later ordered East Timorese officers to free him for lack of evidence. The government subsequently closed his business.

The District Court found that Wong's arrest and detention by police was unlawful. However, on the same day the same court issued a warrant authorising the re-arrest of Wong on suspicion of the alleged illegal export of goods and breach of East Timor's border control laws. In a detention review hearing on 2 June 2003 Investigating Judge, Joao Henrique de Carvalho, issued a preventive detention order. A successful *habeas corpus* application was ultimately made by Wong (Jolliffe 2003b; JSMP 2003d).

Rogerio Lobato and the traffic accident

The former Minister of the Interior has previously been noted as someone who has form on exercising his power personally, rather than institutionally. Lobato's sense of his own power was demonstrated on 7 November 2005 in Dili when he was involved in a traffic incident with a truck carrying two men. Allegedly his response was to pistol-whip one man in the truck and then smash both men's heads into the road (Hyland 2006).

Rogério Lobato gives permission to kill demonstrators

Several months after the traffic incident mentioned above the Minister of Interior told the media in a press conference that although he had given the sacked ‘petitioners’ from the F-FDTL permission to have a demonstration, he added that “if the protesters commit a crime, police will shoot”. He was also reported as having asked everyone, without any hint of irony, to maintain law and order (UNOTIL 2006).

Xanana Gusmão claims to have extraordinary powers

In January 2008 Prime Minister Xanana Gusmão threatened to arrest local journalists, claiming that inaccurate news reporting was contributing to national instability (Dodd 2008). He is reported to have made similar threats in on 28 September 2008 in Ainaro in relation to a planned FRETILIN peace march: “I heard that you are preparing for a Peace March in Dili. I am waiting for you there. I will put you all behind bars!” (FRETILIN 2008d). The Prime Minister repeated similar claims during October 2008.

In 2009 the East Timorese government announced a general clean-up program, the *limpeza geral*, in Dili which required all public servants to be involved in a general clean up. A number of reports were made about the PNTL dragging people, rarely public servants, out of taxis and forcing them to take part in the clean up. Initially there was no legal basis to the clean up. This did not stop the Prime Minister from threatening the staff of a number of international NGOs and private companies including ARD, Peace Dividend Trust and GRM that if they did not take part in the clean up he would shut down their offices.¹⁰⁶ Ultimately a government Resolution was passed to authorise the process, but only in relation to public servants.¹⁰⁷

All of these examples illustrate the way that members of the political leadership feel unconstrained in using, or threatening to use, powers that according to law they do not have. This provides further illustration of the enduring phenomena of what Gunn refers to as *liurai*-ism as previously discussed in chapter 2.

¹⁰⁶ Interviews with NGO workers in East Timor 4 July 2009. A further *limpeza* was announced for 23 December 2009. TVTL television footage of that event shows a track-suit clad Prime Minister, Xanana Gusmão, forcing a woman to take part in the clean up by pulling her off her bicycle.

¹⁰⁷ Government Resolution No. 7/2009.

4.5.4 Amnesties and pardons

Amnesties and pardons, both forms of clemency, have formed part of the standard repertoire of transitional justice tools available for many decades.¹⁰⁸ The use of clemency has been controversial, with debate focusing on a choice to be made between truth and justice. Proponents of amnesties argue that clemency measures can foster what may be a fragile peace, and that to achieve this it may be necessary to set aside an imperative for justice through prosecution. However, it has increasingly been argued that amnesties should not be used unless the amnesties conform to legal norms and should not be used in the case of war crimes and crimes against humanity. This is the position taken by the UNSG (United Nations 2004a: 21). Laplante (2009) has argued that recent developments in both international criminal law and human rights law cast a much wider doubt on the lawfulness of amnesties.

The East Timorese Constitution contains provision for both amnesties and pardons.¹⁰⁹ In East Timor many iterations of amnesty laws have been tabled, approved by the Council of Ministers or even passed by Parliament, but none has ever been promulgated. A significant number of pardons, however, have been granted. Many versions of proposed amnesty and pardons legislation have displayed a politicised disregard for technical compliance with the Constitution and have contained poorly-drafted ambiguities that do nothing for furtherance of rule of law. I argue that although none of these laws have been promulgated, by having clemency laws and proposals for pardons perpetually ‘on the table’ the political leadership has contributed to a belief that justice is something to be enacted at their whim, rather than through compliance with the rule of law. When read together with real failures to deliver justice for serious crimes, the considerable shortcomings in the domestic judicial system and the consternation and debate that each occasion of proposed or real clemency causes among victims, I contend this leads to a sense of hopelessness about the possibility of ever establishing a justice system that is bound by institutional rather than personal regulation.

Even before independence the East Timorese leadership had been preoccupied with the issue of amnesty for past crimes. It is believed that a concern about facilitating the return

¹⁰⁸ Teitel (2000: 54) notes that “‘Clemency’ has a broad meaning, which includes amnesty and pardon. Though some distinguish these terms because of their impact or occurrence pre-or post-conviction, they are often used interchangeably”.

¹⁰⁹ Article 95 (3) (g) of the Constitution makes it incumbent on the National Parliament to grant amnesties. Article 85 (i) makes it incumbent upon the President of the Republic “to grant pardons and commute sentences after consultation with the government”. As no other detail is provided it appears that the Parliament and the President have extensive powers to grant amnesties and pardons respectively.

of refugees from West Timor was behind this preoccupation.¹¹⁰ In early May 2002 Xanana Gusmão prepared a draft law on amnesty and pardons, which was presented to the Constituent Assembly, a precursor of the National Parliament. The Constituent Assembly declined to debate the draft law so close to independence and sent it for redrafting (JSMP 2002c). Five days after independence it reappeared as the first legislative initiative of the East Timorese government. Although the law was passed by the Council of Ministers on 25 May 2002, it was promptly withdrawn.¹¹¹ In two separate reports on the (once again) redrafted law, JSMP commented on the practical implications of the law (JSMP 2002b) as well as on the law's constitutionality and consistency with principles of international law (JSMP 2002c). JSMP expressed concerns about the lack of definitions of critical terms, the lack of procedures, unclear timeframes of applicability, lack of clarity on which crimes would be subject to the CAVR and which to the Amnesty law, the apparent amnesty for all kinds of property crimes for a period of three years since the arrival of the UN, the apparent amnesty for all crimes (with the exception of certain serious crimes specified in Article 160 of the Constitution) by members of the resistance (itself undefined), and an assumption inherent in the law that everyone who joined militias prior to 30 September 1999 did so under duress (JSMP 2002b, 2002c). JSMP also argued that the law was unconstitutional in a number of respects.¹¹² Attempts to get other iterations of the law through Parliament in 2001 and 2003 were also unsuccessful.

In 2004, as the anniversary of independence approached, Draft Law NR. 24/I/2a "On Amnesty and Other Clemency Measures" was passed in generality by Parliament. This produced adverse comment from a range of civil society organisations and opposition parliamentarians, who were concerned that the law would produce judicial chaos and undermine the serious crimes process (JSMP 2004b; LUSA 2004, 2008).¹¹³ The preamble of this law stressed the importance of forgiving even those "who have committed so-called 'serious crimes'", a phrase which arguably signals a deliberate distancing on the part of the

¹¹⁰ Pers. Comm. Aderito de Jesus Soares April 2009.

¹¹¹ National Parliament Law 1/2002 as passed but not promulgated. Unofficial English translation from Portuguese at <http://www.jsmp.minihub.org/English/webpage/reso/reso.htm>. Accessed 1 April 2009.

¹¹² They argued that the law violates the following articles of the Constitution: Article 16 (on discrimination and equality before the law), as it differentiates between members of the Resistance and other East Timorese; Article 160 (on prosecution of crimes against humanity), as the law purports to be able to make crimes against humanity, genocide or war crimes not liable to criminal proceedings; Article 85 (i), as the law purports parliamentary power to commute sentences which is an exclusive competency of the President; Article 118 (1) (on the courts as bodies responsible for administering justice) and Article 69 (on separation of powers), as the law purports to reduce sentences, for cases that had not been instituted, heard or finalised, which would contravene principles of separation of powers and non-interference with the judiciary (JSMP 2002c: 5-9).

¹¹³ It is unclear whether this law foundered on the second reading in Parliament or at the promulgation stage.

East Timorese government from the UN-sponsored retributive justice processes. The law, however, does not address the question of reconciliation.

A number of significant, and arguably influential, events were occurring at the same time as this law was being debated. These included the issuing of an arrest warrant for General Wiranto by the SPSC on 10 May 2004, something that East Timor's government strenuously distanced themselves from; the April 2004 endorsement of General Wiranto as the Golkar candidate for the Indonesian Presidency in elections scheduled for 5 July 2004, and an impending signing of a border agreement between Indonesia and East Timor.

In responding to the Wiranto arrest Prosecutor-General Longuinhos Monteiro declared "I regret that arrest warrant, my men have opened fire without an order from me" (Powell 2004). President Xanana Gusmão met at short notice with Indonesian President Megawati Sukarnoputri, where "both leaders agreed that they did not want the issue of past human rights violations to disturb their bilateral relations". Gusmão went on to state "the government does not always follow or recognise SCU's decisions" (Powell 2004). The local paper, *Timor Post*, reported the Foreign Minister Ramos-Horta as saying, in relation to the serious crimes process more generally, that a solution "acceptable to all" had to be found which would not "weaken the strong ties between Timor and Indonesia". On 20 May 2004, the second anniversary of the restoration of independence, Xanana Gusmão cut nearly nine years from the sentences of three East Timorese (pro-Indonesian) militia members who had been convicted by the SPSC of killing a group of nuns and clergymen in 1999 (Associated Press 2004), describing the clemency as a "symbolic act of forgiveness" (Agenzia Fides 2004).

On 4 June 2007 the East Timorese Parliament passed the Law on "Truth and Measures of Clemency for Diverse Offenses". An earlier draft had been approved by the Parliament both in committee and in plenary in March 2007, but negative public reaction resulted in a redrafting process (La'o Hamutuk 2007b). The June 2007 Law included provision for amnesties for crimes committed between April 2006 and April 2007. The law was introduced only months before the 2007 election. It was widely regarded as an attempt by the FRETILIN government to ensure that various members of the political elite would either be pardoned or their cases abandoned. It was speculated that the law was particularly for the benefit of the former Minister of the Interior, recommended for prosecution (International Crisis Group 2007: 8). This contention can be supported, as within days of the law being passed by Parliament Lobato's lawyers had approached the Prosecutor-General to request amnesty for him (La'o Hamutuk 2007a). Others have claimed that the

impetus for the law came from Ramos-Horta (March 2008), and it would certainly have been in keeping with his well documented 'forgive and forget' approach. A further impetus for the law, as with the 2004 draft, appeared to be another attempt to 'clean up' the unmanageable case load in the court system (La'o Hamutuk 2007a). Ramos-Horta appears to have succumbed to significant pressure regarding the law, which resulted in him referring it to the Court of Appeal for review ahead of deciding whether to promulgate it. In August 2007 the court ruled that provisions relating to the time period covered by the law were unconstitutional but allowed other amnesty provisions to stand. There had been concern that, once promulgated, the law would not only prevent new prosecutions but might lead to the release of those already convicted. In any event the law joined a long list of amnesty laws that never entered the books.

Although a number of pardons had already been granted in East Timor, the granting of full and partial pardons to ninety-four convicted men on 20 May 2008 by President Ramos-Horta resulted in significant consternation from civil society organisations. Ramos-Horta started to foreshadow the granting of these pardons at the same time as Gastão Salsinha and others believed to have been involved in the near fatal February 2008 attack on Ramos-Horta's life were preparing to surrender to authorities. This led to speculation that the pardons had been designed to lure Salsinha and his group into surrendering, with the implicit message that the men would never really face justice. Those 'released' as a result of the 20 May Presidential Decree included Rogerio Lobato ¹¹⁴ and Jhoni Marques, who had been convicted of crimes against humanity. Nine prisoners serving sentences for committing crimes against humanity in 1999 also received commuted sentences, with four released in June 2008. Contrary to requirement, the pardons and commutations were granted without any formal evaluation of the beneficiaries' conduct in prison or ability to reintegrate into society. This resulted in an unsuccessful legal challenge in the Court of Appeal by a group of eleven politicians and NGOs (U.S. Department of State 2009).

In March 2009 when twenty-five former military personnel and three civilians were finally indicted for the February 2008 attacks on the President and Prime Minister, President Ramos-Horta welcomed the forthcoming trial process, but once again immediately started to speculate that he would pardon those convicted (ABC News 2009). The previous month it was reported that Ramos-Horta had met Salsinha, Susar and Caetano at the office of the Prosecutor-General to request that they reveal who it was that shot him. It was also reported that he said, "I met Mr Salsinha and some of his friends and I don't want them to

¹¹⁴ In fact Lobato had been out of prison for some time as he had been allowed to go to Malaysia for medical treatment and, contrary to his agreement with the government, had never returned.

be held responsible for the crisis that occurred because they weren't the leaders" (Ramos-Horta suspects to stand trial 2009), raising serious concern about political interference with the judicial system, pre-empting the outcome of the trials and possibly paving the way for a mistrial.

In the next section I detail the practical consequences of these manifestations of ambivalence and reticence about the rule of law for the development of the East Timorese police institution.

4.6 Practical consequences for police development and function

Those who commit violations know that they can do so without being punished. The local population's lack of confidence in state institutions to provide justice and accountability, in particular in the military, the police, and the judiciary, is central to the country's most pressing current challenges. (Amnesty International 2008).

It has become commonplace for commentators to declare that a culture of impunity¹¹⁵ exists in East Timor or that a certain action will serve to widen a pre-existing culture of impunity. (Kent 2004; Amnesty International 2008; Timor-Leste National Alliance for an International Tribunal (ANTTI) 2008; OHCHR and UNMIT 2009). Concerns about impunity are often conflated with concerns about the generally low capacity of the formal legal system.

The negative consequences of the rule of law context for police development and function are threefold and can be seen to act in a cascading and reinforcing manner. Firstly, lack of function and geographical reach of the formal legal system (and its advisers) in East Timor works synergistically with the lack of function and reach of the formal policing system to further debilitate the function of the police. This is discussed in Section 4.6.1. The process is of course mutual: the lack of police function also impacts on the formal legal system, in particular the function of the courts.

The second consequence relates to the culture of impunity that has developed in East Timor as a result of the ambivalence and reticence of both the governments of East Timor and the UN in their commitment to the rule of law. In the case of the East Timorese government this is underwritten by the personal, rather than institutional, exercise of power. This not only affects the judicial system but also has a more pervasive societal

¹¹⁵ Impunity has been defined as the impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims (United Nations Commission on Human Rights 2005: 6).

influence. In the case of the PNTL this is evident in the widespread lack of accountability of the police when they act beyond their legal mandate. This factor is further accentuated by the failure to hold the F-FDTL accountable to the law. This is discussed in Section 4.6.2.

It might be expected that the combination of lack of function and a widespread culture of impunity would serve to undermine the perceived legitimacy of the police by East Timor's citizens. Constant references to the incapacity of the police by the political leadership would support this contention. However, the 2008 TAF Survey on Community Police Perceptions in East Timor contains findings that would bring this into question. TAF found that:

By overwhelming margins, citizens (85%) and community leaders (84%) believe that the relationship between the PNTL and members of their community is good. A small percentage of citizens (11%) and community leaders (15%) feel that the relationship between citizens and the PNTL is neither good nor bad, and a negligible proportion of citizens (2%) and community leaders (1%) view the relationship as poor. Perceptions of police-community relations vary little along gender lines or across age groups (Chinn and Everett 2008: 51).

However the report notes that such a positive endorsement of the police needs to be read against other survey data that indicates that

only one in ten of the national public said that either they or a member of their family has had contact with the police in the last year . With such relatively infrequent contact, 'community-police relations' in practice may be a moot point. In other words, the high level of reported confidence in the PNTL may better be described as an aspiration or desire for the police as an institution to provide security in the respondents community, than as confidence deriving from the actual presence of the PNTL or direct experience of PNTL's performance (Chinn and Everett 2008: 10).

4.6.1 Contextual constraints on PNTL

The interaction of a weak police force with a weak judicial system during the period covered by this thesis led to difficulties for both PNTL and UNPOL. It has also resulted in a range of innovations by both international and national police that often involve hybrid state/non-state mechanisms for dealing with policing and justice issues in the absence of an adequately functioning state. These innovations are discussed briefly in chapters 3 and 6. From the beginning of UNTAET, CIVPOL officers had to rely on their own initiative in the absence of a clear legal framework and functioning judicial organisations. Devereux (2005: 302) has noted that the lack of any comprehensive review of Indonesian law during the UNTAET period meant that individual CIVPOL officers had to decide what

provisions of the Indonesian criminal code remained valid, or even subjectively appropriate, citing the difficult provisions such as adultery and premarital sexual relations.

The failure of courts to function for long periods has made it difficult to abide by the requirement to bring an arrestee before a judge within seventy two hours,¹¹⁶ a difficulty often exacerbated by the logistical and transport situation of police in remote districts and subdistricts. On some occasions this resulted in people being held for considerably longer than allowed, on other occasions it results in people being released without charge (JSMP 2006b: 16) or released conditionally, something for which there is no legal basis (Amnesty International 2003: 75). It appears that police on occasion believed that it was a requirement to hold anyone arrested for seventy two hours before you could let them go, something that a number of PNTL explained to me in the Dili District police station in late 2004. Concerns about the emergence of arbitrary arrest arise when the police administer punishment, without charges being laid (Amnesty International 2003: 69; Human Rights Watch 2006).

Knowing the limitations of the courts, police will often try to manage cases themselves. This is accentuated by young police being posted to their home districts upon graduation where they must fit in with far more entrenched systems of social order (Mearns 2002: 36-37): In an interview in July 2007, a former student leader, originally from Viqueque, said he had seen a police officer tell an offender that if he didn't stop what he was doing that the police would tell the *chefe de suco*, indicating that the police officer knew real power did not lie with his office but rather with the *chefe*.

In relation to sending new graduates back to their home district Mearns (2002: 36) notes that

the logic of using people familiar with the social and cultural ways of the population seems at first glance quite sensible. It is also probable that people from an area will know the people and their reputations in a way that could assist intelligence gathering and crime detection. However a real risk is inherent in this practice. The mainly young men and women, often unmarried and therefore still 'children' culturally will be returning to a very hierarchical system of authority in which they will be very junior in many cases. Moreover given the strength of family ties and collective sentiment in this context, the ability to remain and be seen to remain neutral may be extremely difficult. There will be real conflict between one's obligations to one's kin and one's obligations to the law. Reliance on food and shelter from family resources will also add to these tensions.

¹¹⁶ UNTAET Regulation 2000/30 Section 20.1.

My interviews in the district of Oecussi in November 2007, confirmed by research conducted by JSMP, found that in cases of domestic violence police will tend to refer 'lesser' cases to the traditional justice system rather than put it through the formal justice system. In cases where an arrest has been made, JSMP found that police would use the seventy-two hour detention period not to investigate the offence but rather to give the woman time to decide whether she wanted the prosecution to proceed (JSMP 2005b: 12).

As of early 2009 the U.S. Department of State was reporting that "the extreme shortage of prosecutors and judges outside of the capital contributed to police inability to obtain warrants" (U.S. Department of State 2009). They also noted that "the countrywide shortage of magistrates means that police often made decisions without legal authority as to whether persons arrested should be released or detained after seventy-two hours in custody. This contributed to an atmosphere of lawlessness and impunity". Trials often fail to proceed because witnesses are not there because they have not been notified or have not been able to get transport (U.S. Department of State 2009).

When staff are not adequately trained and the law is unclear and not translated into an accessible language, police and courts find it difficult to co-operate. The National Democratic Institute noted that

the police continue to exhibit a fundamental lack of knowledge and understanding of the law they are enforcing. Charges are often unclear or illegal, and when cases come before the courts they are often dismissed through a lack of evidence or acceptable evidence-gathering practices and through a failure to observe process (National Democratic Institute for International Affairs 2004b: 5).

It is apparent that in practice the weaknesses of both the police and judicial system act to limit each other's functions.

4.6.2 Impunity for the police and military

Apart from the generically poor functioning of the judicial system, a number of more specific factors support the current impunity of members of the police and military in East Timor. This impunity can be considered a limiting factor in the promotion of police development and function.

In 2003 Amnesty International warned that the lack of accountability and transparency in dealing with complaints against members of UNPOL could reinforce the UN's failure to establish suitable oversight mechanisms for PNTL. They anticipated that this would set precedents for the way in which complaints regarding the police would be handled by the

East Timorese government following resumption of policing responsibilities (Amnesty International 2003: 34). In the same report they raised concerns about use of non-formal legal processes for 'resolving' issues of violent and arbitrary police behaviour, noting the inequitable position that women and children are put in by these processes. I would argue that the potential of the use of armed force by the police puts all citizens in this position when there is a dispute involving a member of the police force. The report cites the case of rape of a 15 year old girl by a PNTL member, where all formal investigations foundered but a traditional *adat* process resulted in compensation to the family of the girl including US\$500 and a buffalo (Amnesty International 2003: 37-38).

Concerns about police violence, torture and attendant impunity in East Timor have been the subject of a special report by Human Rights Watch (2006). Concerns raised in the report include a 'failure to respond' appropriately on the part of the police and other government institutions, with a tendency to resolve things internally rather than also engaging the criminal justice system. Ongoing impunity for the police and military is discussed further in chapters 6 and 7.

4.7 Conclusion

In this chapter I have argued that in East Timor the broader rule of law context, including the formal rule of law institutions, attendant informal institutions and socio-cultural attitudes to law and justice has been affected by the history narrated in chapter 2. The rule of law context has a significant impact on the development and function of the PNTL, the institutional weaknesses of which reinforce and are reinforced by the weakness of other rule of law institutions. Deep ambivalence about rule of law displayed by the East Timorese political leadership, successive UN missions and UNPOL confounds attempts to establish the police institution, and has led to a culture of impunity characterised by personal rather than institutional exercise of power that impacts on all rule of law institutions, including the PNTL.

Reasons for a culture of impunity in East Timor include the failure of both Indonesia and East Timor to prosecute the great majority of those responsible for serious violations of human rights between 1974 and 1999 and the reluctance of the international community to establish an international tribunal to address these violations. Impunity is also evident in the failure of the East Timorese Parliament to debate the recommendations of CAVR and the CTF. It is conspicuous in failures to prosecute, and slow progress made on recommendations for prosecution, or further investigation, by the UN Commission of Inquiry in relation to the events of April/May 2006, and the slow progress of investigations

of the attacks on the President and Prime Minister in February 2008. Similarly there are the failures to prosecute police and military involved in violence during the operation of the Joint Command in 2008. Each failure underpins subsequent failures. The culture of impunity is held to have contributed to the assassination attempts on the President and Prime Minister in February 2008.

The root causes of the emerging culture of impunity are complex, with poor technical functioning of the judicial system a symptom as much as a cause of a culture of impunity. Arguably, long-standing historical impunity for political figures and high-ranking military officers in Indonesia, particularly in the case of human rights violations (International Crisis Group 2001b), informs current practices in East Timor, in particular expanding police and military impunity.

The penchant of most of the political elite, including Ramos-Horta and Gusmão, for 'reconciliation' over prosecution is influenced by fears of 'accountability' re-igniting the brutal divisions of the 1974-75 civil war. These fears inform the culture of impunity. Similarly, there is widespread frustration that it is low-level East Timorese militia, rather than high-ranking Indonesian architects of the events of 1999, who have been tried and sentenced for their crimes, and an attendant sadness that many Timorese were coerced into joining the militias. Previously I have discussed a preference for personal rather than institutional exercise of power in East Timor. That the cascade of problems detailed above is as much societal as legal contributes to the belief of the political leadership that such problems can, and should, be solved personally by influential and powerful people.

UN ambivalence about the rule of law has also contributed to East Timor's culture of impunity. Despite repeated mandates to assist in the development of the justice sector and the appointment of a Deputy Special Representative for Security Sector Reform and the Rule of Law the UN has given little sustainable support to the East Timorese government in establishing the rule of law.

Chapter 5

The security sector context

5.1 Introduction

The purpose of this chapter is to explore the way that security sector context affects the practice and development of policing in East Timor. The chapter begins with an overview of SSR, and the global SSR ‘project’, and reviews debates concerning current policy prescriptions for SSR in post-conflict states. I then situate the PNTL in the broader East Timorese security sector context and examine the principal purveyors of security and insecurity. I look at the overlapping memberships of state and non-state security organisations, the mobile nature of the conflicts in which they involve themselves and the implications for police development.

I conclude that there has been inadequate acknowledgement of the legacies of East Timor’s history in the contradictory visions espoused by international and national actors alike in developing the security sector. There has also been inadequate acknowledgement of the fractured and mobile nature and form of security provision and security actors in East Timor. This is particularly apparent in the dissonance between programmes as designed and programmes as implemented. Appreciating the security sector context in East Timor remains, however, fundamental to the trajectory of police development in East Timor, illuminating as it does the questions of ‘who does policing?’ and ‘what do the police do?’.

In chapter 4 I highlighted how legacies of East Timorese history discussed in chapter 2 condition contemporary attempts to establish the rule of law in East Timor. Similarly, these largely unacknowledged historical factors continue to affect the development of the security sector, including the PNTL. Security sector reform, like rule of law, is widely regarded as one of the pillars of post-conflict state-building, with wrong-sized, unaccountable and illiberal security forces seen as a major reservoir of insecurity. Like the rule of law context, the dynamics between the police and other actors in the security sector are pivotal to understanding police development in East Timor.

In this thesis I use the term ‘security sector context’ to refer to the international and East Timorese actors involved in security related matters, the relationships between those actors, and the international and East Timorese programmes focused on the security sector. In this chapter I do not consider the various threats to individuals and groups that come under the rubric of ‘human security’, such as food security, environmental security and

trafficking in persons, although they are important elements in a security agenda (Hänggi 2007: 5).¹¹⁷

5.2 The SSR Project

Although security sector reform (SSR) is a new term, most of the component parts of SSR – such as military and police reform or development of civilian oversight capacity, were already part of development donor programmes before the term SSR was first used in 1998 (Brzoska 2003: 3-4). The concept of SSR was initially deployed as a way of facilitating the entry of former Soviet states into the European Union and the North Atlantic Treaty Organisation. Following the end of the Cold War an SSR policy agenda has developed in response to changes in understanding about the nature of security threats. These changes in understanding include the recognition that particular states may not be able to provide basic security for their citizens, that the apparatus of those states may be the cause of that insecurity, and that both the welfare and human rights of a state's citizens are integral parts of a consideration of security (GFN-SSR 2007: 3).

Defining SSR has proved elusive, although a number of authors outline what its aims, objectives, or principles should be. A range of benefits are claimed as resulting from SSR, including that it facilitates holistic thinking about a set of interrelated issues and enables coordination of reform efforts both within country and with external donors. It is also claimed to be a necessary prerequisite for achieving both development and stability in post-conflict states (See e.g. McFate 2008; Hänggi and Scherrer 2008). However, many of the claimed benefits are indistinguishable from those claimed for rule of law. The Global Facilitation Network for Security Sector Reform describes the aims of SSR as being:

to create a secure environment that is conducive to development, poverty reduction, good governance and, in particular, the growth of democratic states and institutions based on the rule of law. This relies on the ability of the state to mitigate its people's vulnerabilities through development, and to use a range of policy instruments to prevent or address security threats that affect society's well-being. This includes establishing appropriate civilian oversight of security actors (GFN-SSR 2007).

¹¹⁷ Whereas security at a governmental and supra-governmental level was previously focused on the security of the state and the state system, increasingly the notion of security has been expanded to include security as a 'public good' with the safety and wellbeing of individuals seen as having (at least) equal importance with that of regime maintenance. Consequently the significant but previously separate literature available on 'human security' has increasingly become mainstreamed into security studies. There are both narrower and broader definitions of human security. A narrow definition of human security encompasses addressing violence to individuals in association with poverty, lack of state capacity, and socio-economic and political inequity, whereas a broader definition encompasses the above but also includes hunger, disease and natural disasters (World Bank and Human Security Report Project 2008).

There are both broader and narrower definitions of which actors are encompassed by the security sector. A minimal definition will usually include the police, the army and the intelligence services. A slightly wider definition will include their oversight agencies, such as the executive and the legislature. A broader definition will also include civil society and nonstate security providers, including ex-combatants. The broadest definitions recognise the closely interdependent nature of justice and security and include the institutions of the judicial system, such as courts, prosecutors, defenders and the prison service as well as traditional justice systems.

Increasingly SSR is seen as part of the work of the UN system, with twelve peacekeeping¹¹⁸ and four special political and/or peacebuilding missions that are, or have been, involved explicitly or implicitly in SSR activities (Hänggi and Scherrer 2008: 9-10). Although SSR has only recently entered UN mandates, the UN has for a long time engaged in some of the component activities that involve the establishment, reform, and training of parts of the security sector. A range of bilateral and multilateral agencies, regional and sub-regional organisations, and NGOs are also increasingly involved in aspects of SSR.

Ultimately SSR is about engineering change and rearranging power relationships within the most sensitive areas of governance. SSR in its original and subsequent formulations is a 'modernising' project informed by Western liberal values, seeking to introduce ideas of security organisations subject to democratic civilian control. This carries with it an assumption that reforming the security sector will produce broader cultural, governance and societal change (Scheye and Peake 2005: 297-299). The SSR project also carries other assumptions about the way change is effected in institutional settings. SSR programmes tend to be rationalist in nature, having an outcome that implementers want to achieve and a series of activities planned in advance for achieving that outcome. Programmes assume a high degree of influence of implementing agencies and personnel. Characteristically, however, they underestimate what will happen to those programmes when introduced into the particularly unpredictable context of a post-conflict environment (Piotukh and Wilson 2009: 4-5). One of the purported benefits of SSR programming is its holistic nature but in practice this can often translate to programming that is overstretched and overambitious, in circumstances frequently constrained by inadequate local human and financial resources (Scheye and Peake 2005: 305-306; Rauch and van der Spuy 2006: 16).

¹¹⁸ This includes eleven UN Missions (past and present) and the hybrid UNAMID mission (African Union/UN Hybrid operation in Darfur). For details of the eleven missions see Hänggi and Scherrer (2008) For UNAMID mandate see <http://www.un.org/Depts/dpko/missions/unamid/mandate.html>

Many SSR programmes are premised on an idealised Weberian state. This does not conform to any kind of reality in post-conflict and fragile states, making the ideal difficult to construct and sustain (Stepputat, Andersen, and Møller 2007:11-12). Whereas in Western states security provision has developed in an iterative, responsive and contested way over very extended periods of time, this is usually not considered in programming that is time-delimited and externally determined (Martin and Wilson 2008: 102; Donais 2008b: 13).

In situations where the reach of the state is (and may always have been) incomplete, human, logistical and financial capacity is limited, and the legitimacy of state security institutions is compromised, it will also often be the case that most security (and justice) services will be provided by non-state actors (Stepputat, Andersen, and Møller 2007:8-9). In these circumstances focusing primarily on strengthening state-based institutions will not deliver security outcomes to most of the population (Stepputat, Andersen, and Møller 2007:4-5; OECD 2007b:6-8). Not only will these misunderstandings of context lead to poor allocation of resources for 'security', but the dangers of making mistakes and miscalculations in dealing with weapons, armed groups and those with military training and orientation are significantly greater than other developmental mistakes that might be made (Muggah 2009:3).

Although the requirement for local ownership is now a standard part of SSR programming documentation, it can prove very difficult to achieve for many of the reasons outlined in chapter 1. In particular, there may be major disjunctions between the desired outcomes for SSR implementers and recipients. Although donor agendas commonly revolve around governance and accountability issues, this may be very different to the agendas of ordinary people for whom tangible improvements in everyday security may be far more pressing. It is often overlooked that very different programming will be required to achieve these disparate outcomes, and that one can not assume that security will 'trickle down' from 'good governance' (Scheye and Peake 2005: 300-301).

Laurie Nathan takes a definitive position on ownership:

the reform of security policies, institutions and activities in a given country must be designed, managed and implemented by domestic actors rather than external actors. The principle is misconstrued if it is understood to mean that there must be a high level of domestic support for donor activities. What is required is not local support for donor programmes and projects but rather donor support for the programmes and projects supported by local actors (Nathan 2008:21)

There is a conundrum evident, however, in Nathan's position. He argues compellingly for SSR that is entirely recipient-driven. SSR, though, is by definition a part of a normative democratising and accountability project that requires the rearrangement of existing power relationships. This may in all likelihood not sit comfortably with the political elite in a post-conflict country, who have already been, quite possibly, and more than likely, engaged in significant power struggles over who will control the uniformed and other security forces. Such struggles are not characteristically carried out in a way that is transparent, democratic or accountable to the population at large.

Many commentators note the complexity of SSR undertakings and that achieving consistency and coordination within a multifaceted SSR program is difficult. It is also an expensive and human-resource-intensive process, and maintaining donor interest and commitment over the long time frames required is challenging (GFN-SSR 2007). In addition to these practical considerations SSR is often criticised for being an ad hoc process, lacking in coherent strategy, manifesting as a 'grab-bag' of previously separate activities repackaged as an SSR program (Egnell and Haldén 2009). Clearly, coordinating an undefined reform task amongst the many actors that may, or may not, comprise the security sector is a daunting task.

SSR has also suffered from a shortage of institutions and personnel familiar with the complexity of the undertaking. A small number of commentators raise concerns about the capacity of international actors who carry out SSR:

The organisations charged with implementing reform usually lack appropriate structures and capacity, while many of the international personnel engaging in field-based activities – the link between policy goals and policy achievement – do not possess the necessary skills (Peake, Scheye, and Hills 2006: 251).

Although the UNSG has noted that "a holistic and coherent United Nations approach to security sector reform is vital" (United Nations 2008b: 2), not all parts of the UN have embraced the concept. Ad hoc approaches and a failure to develop an integrated security sector reform framework across the UN have been identified as a major constraint on the quality and effectiveness of UN efforts in the SSR field (United Nations 2008b: 12). For example, the failure of UNPOL to adopt the concept has meant the idea has limited currency in UN missions, evidenced by a lack of integration of security sector activities. The incorporation of the slow 'developmental' work of SSR into peace operations is often in conflict with the limited timeframes of UN missions, who more often than not would like to effect quick handover and exit. On those rare occasions when the UN is granted the

broad powers associated with executive authority (such as was the case with UNTAET) the mandate may be too short to realistically achieve outcomes, or the mission's legitimacy at a local level may be compromised. On the other hand where there is a requirement to 'co-operate with' or 'assist' a sovereign government (as is the case with UNMIT) the UN mission may well have its effectiveness curtailed as the sovereign government, or parts of it, seeks to maintain control of, or subvert, the process (Rees 2006:10).

5.3 Security Sector Actors

There are a great variety of state and non-state actors who provide security or implement security-related programmes in East Timor. However, all international programmes are focused on state institutions. There is often an assumption that it is state-based security providers that are, by definition, providers of order and stability, whereas non-state agents are seen as purveyors of instability and insecurity. Not only may this be an erroneous assumption, but it may in fact contribute to greater forms of insecurity (Stepputat, Andersen, and Møller 2007: 11). It is recognised that dealing with non-state actors will take donors (and on some occasions post-conflict governments) beyond that with which they have customarily felt comfortable. Yet the kind of concerns raised in relation to non-state providers – that they are not accountable, that they often do not serve the needs and interests of marginalised segments of society, in particular women and children, that they may have partisan political or ethnic affiliations, and that their practices do not accord with human rights – are usually concerns that apply equally to state-based security providers (OECD 2007b: 6).

Stepputat, Andersen and Møller (2007: 12-13) also stress the importance of understanding that those who provide security, whether state or non-state, can, in slightly changed circumstances, become purveyors of violence and insecurity. Conversely, those who have been regarded as contributing to insecurity and violence may, with the right incentives, become protectors. This has been described in the case of the fragmentation and 'repackaging' of (in)security groups in post New-Order Indonesia (Wilson 2006: 265-293).¹¹⁹

Baker and Scheye note that although the 'order' that is being 'supervised' by state and non-state actors differs, the line between state and non-state security and justice is 'ragged':

¹¹⁹ This takes on particular relevance in Indonesia where it has been estimated that up to seventy percent of police funds and resources come from extra-budgetary sources, leaving the door open for non-state security groups, not only to step into the security gap themselves, but also to bankroll aspects of POLRI (Nordic Consulting Group 2004: 11).

For instance, non-state security and justice can be undertaken officially or unofficially by state functionaries; or state police may outsource their dirty work, which they are not entitled to perform. Non-state security and justice often turns out not to be wholly autonomous. There are degrees of escape from the state's gravitational pull. There are different levels at which the state may shape and influence non-state security and justice agencies: sponsorship, regulation/criminalization, networking/exclusion, collaboration, incorporation and training. In many fragile countries, it is impossible to distinguish sharply between state and non-state justice and security systems (Baker and Scheye 2007: 512-513).

This kind of fluidity is also evident in East Timor. It dovetails with the phenomenon of the personal rather than institutional exercise of power and is evident in the mobile nature of specific security and insecurity actors and the shifting pattern of alliances between institutions and groups. This will be discussed further in Section 5.3.3 and 5.3.4.

Similarly to the need to ensure local ownership stated in the broader state-building literature, much of the policy literature contains exhortations not to use a 'cookie-cutter' approach to SSR and to pay attention to the local context. Although the security sector is often described in the broadest terms, the majority of programs still focus on 'rightsizing' and democratising state security forces. This indicates that insufficient understanding of history and culture and attendant legacies are apprehended by policy makers and implementers. Alternatively one could surmise that the context is apprehended but not heeded, possibly due to the pre-existing constraints of donor organisations.

5.3.1 International Security Sector Actors

UN civilian police were mandated for a variety of executive policing, institutional development and advisory roles in the UNTAET, UNMISSET and UNOTIL missions, as outlined in chapter 3. UN military peacekeepers were a feature of UNTAET and UNMISSET. International military and police peacekeepers returned to East Timor amidst the chaos of the 2006 crisis. This was requested by the East Timorese government, who sought peacekeeping assistance from Australia, New Zealand, Malaysia and Portugal. Australia and New Zealand provided military forces and Malaysia and Portugal provided Formed Police Units (FPU). The rationale for inviting in individual countries was based on the urgency of restoring law and order and the slowness that characterises UN deployment.

Upon commencement of the UNMIT mission these FPUs came under the auspices of UNPOL. UNPOL became responsible for the mandate to restore and maintain public security until such time as the PNTL is reconstituted. UNPOL were also required to assist with the further training, institutional development and strengthening of the PNTL and the Ministry of the Interior. In addition UNMIT was mandated to assist the East Timorese

government to conduct a comprehensive review of the security sector including the F-FDTL, the PNTL, the Ministry of Interior and the Ministry of Defence. This is the responsibility of the UNMIT Security Sector Support Unit (SSSU). The reconstruction of the PNTL and the security sector review will be discussed in detail in chapter 6.

It had initially been anticipated that the military peacekeepers would also transfer to UN mission control. However, two months after the commencement of UNMIT the Security Council reaffirmed that the Australian-led Joint Task Force would remain outside of UN command structures, becoming known as the International Stabilisation Force (ISF).¹²⁰ This decision caused considerable controversy.

More than three years after the commencement of the UNMIT mission the continued presence of international security actors is a matter that the East Timorese political leadership is not entirely positive about. The PNTL and F-FDTL took over responsibility for security from the UN in 2004 and there is considerable resentment and a widespread unease about ceding the responsibility for policing to foreigners. Similarly the continued deployment of the ISF represents a challenge to the sovereign role of the F-FDTL.

With the wisdom of hindsight some of the decisions made by the UNTAET administration, particularly in relation to the way that the police and military were established, might have been undertaken differently. These decisions have cast long shadows that were influential in the crisis of 2006. Consequently suspicions have been expressed by members of the Timorese political elite about the motives approach and political neutrality of both UNPOL and the ISF. Given the substantial role of foreign forces, the tensions surrounding their continued deployment, and on occasion the armed battles between international and national forces, it is important to include them in any analysis of the East Timorese security sector.

¹²⁰ When the UNMIT mission was first mandated the Security Council delayed a decision about how the military command would operate. Australia insisted on keeping its soldiers under Australian command, something that was supported by the U.S. and U.K. This position was opposed by the UN Secretary-General, the governments of East Timor, Portugal, Malaysia, and a significant number of Timorese civil society representatives, who believed that a unified military force under UN command was preferable. Initial Status of Forces Agreements (SOFA) were concluded between East Timor and the four countries above. The SOFA Agreements were replaced by a Memorandum of Understanding (MOU) between the Foreign Minister of East Timor, the Ambassador of Australia, and the SRSG of UNMIT. The MOU establishes a Trilateral Coordination to be chaired by the Prime Minister of East Timor to discuss and coordinate security arrangements (Democratic Republic of Timor Leste, United Nations, and Embassy of Australia 2007; La'o Hamutuk n.d.).

5.3.2 The PNTL and the F-FDTL

In chapter 2 I discussed some of the historical background to the problems between the PNTL and the F-FDTL in East Timor. In this section I elaborate the divisions within PNTL and F-FDTL and the relationship between the two institutions.

PNTL and its divisions

In chapter 3 I discussed the executive policing and institutional development role of UNPOL. There were significant pressures on UNPOL in carrying out executive policing, brought about by understaffing, inappropriate staffing, lack of planning and inadequate understanding of local geography, language and culture. This led to the creation of the Police Assistance Group (PAG), comprising former Indonesian era police (POLRI) in 1999. When recruitment of the East Timor Police Service commenced in 2000 many members of the PAG were recruited to the new police force. The remaining recruits had no policing experience. Many of the Indonesian-era police had greater experience, were fast-tracked through police training and ended up in senior positions, including the first East Timorese Police Commander, Paulo Martins (Hood 2006b: 64). These recruitment decisions proved to be unpopular. Many people identified former POLRI members with the brutal Indonesian occupation, even though some former POLRI who were part of the new police force had played active roles in the resistance movement. Although there had been a process of vetting of former POLRI members by UNTAET and CNRT, parts of FRETILIN and veterans groups remained deeply unhappy with the decision (Hood 2006b: 64).

The role of historical legacies became evident as PNTL became factionalised and politicised, with groups in PNTL based on previous identities as former POLRI, former resistance members and former Indonesian university students. The pattern of personal rather than institutional power bases became conspicuous, with loyalties coalescing around senior commanders (United Nations 2006a: 57). It was also possible to identify a group handpicked by the Minister of Interior who formed the special police units that were considered personally beholden to the Minister. Another faction, reportedly the largest, had primary loyalties to the President. The existence of these factions and the political weakness of the Commissioner were both destabilising forces within the police (Graydon 2004: 11). The Minister regularly interfered in operational matters and was selective in the

handling of disciplinary processes. This undermined the command structure and lead to a more fractured force (United Nations 2006a: 57).¹²¹

A division between PNTL members originating from the eastern and western districts also became evident from 2004. A group calling itself '*Polícia Nacionalista*' comprising PNTL members mainly from eastern districts was publicly critical of the institution of PNTL and the PNTL General Commander (International Crisis Group 2008: 16). Subsequently twenty one *nacionalista* officers were disciplined, and the Deputy Commander (Administration) was removed from his position, although he had not been subject to a disciplinary process (United Nations 2006a: 57-58).

F-FDTL and its divisions

In the lead-up to the August 1999 referendum, Falintil, under directions from Xanana Gusmão, agreed to placement in cantonments throughout East Timor. Despite increasingly violent attacks on the civilian population during this time Falintil did not engage the Indonesian army or the Indonesian-backed militia. The motivation for this restraint was the foresight that if the Indonesian government was able to cast the violence in East Timor as a civil war, as primitive people fighting amongst themselves, the critical support required from the international community would not be forthcoming (Barry and Barry 2001: 10; McCarthy 2002). Following the post-consultation violence Falintil's display of discipline was rewarded by international support firstly in the form of INTERFET, followed shortly after by the UNTAET mission.

After the arrival of UNTAET, Falintil High Command agreed to a single cantonment of approximately 1 200 men in Aileu (Rees 2004a: 12, n 32). Many personnel in UNTAET did not appreciate the historical and nationalist significance of Falintil, and apart from a generalised mandate to disarm armed groups, had no particular plan as to what should be done with them (King's College 2000: 7-8). The men stayed in cantonment in increasingly poverty-stricken and desultory conditions for fourteen months, while morale steadily declined. The lack of anything to do and the failure of UNTAET to envisage any future role for Falintil caused distinct unease, and threats of revolt began to emerge (Rees 2004a: 3, 32; King's College 2000: 7).

Initially it had been envisaged by the resistance that an independent East Timor would follow 'the Costa Rica model', which envisaged a paramilitary force but precluded the

¹²¹ See also Rede Monitorizaçaun Direitus Humanus (RMDH) (2006) for extensive allegations of how the Minister of Interior used the PNTL for personal purposes.

formation of an army. However, the extent of destruction by the Indonesian army and their militias following the popular consultation, coupled with growing irritation at being in cantonment, led to calls for the formation of a defence force drawn from the ranks of Falintil. During consultations on the future of Falintil an UNTAET official noted that “for any army ‘idleness and privation’ are a combustible combination” (King's College 2000:16).

A study by King's College on Force Options proposed three options for future defence force development (King's College 2000: 12, 49-52). UNTAET and CNRT accepted the third of the Kings College options, for the creation of a 3 000 strong force, comprising 1500 regulars with the balance made up of reservists. Deciding who would become a member of the new defence force and who would be demobilised through the Falintil Reinsertion Assistance Program (FRAP)¹²² or excluded from it was left entirely up to the Falintil High Command, who were loyal to Xanana Gusmão. This laid the foundation for the perception by FRETILIN that the military could never be controlled by them in government and that it would always be beholden to the man who would become President. Ultimately only 650 former Falintil were selected to form the first battalion, and the remaining 1 300 were demobilised under the FRAP program.

The transition from a guerrilla force to an impartial state force was always going to be difficult given the historical relationships between Gusmão and the Falintil commanders who became FDTL commanders. Gusmão had been Commander in Chief of Falintil and later, in line with the Constitution, as President automatically became Commander in Chief of the Defence Force. One of the former Falintil Commanders was Taur Matan Ruak, who from 1998 was Operational Commander of Falintil and in 2001 became Brigadier-General and Chief of the Defence Force. (McCarthy 2002: 10, 14; Rees 2004a: 48-50). Another former Falintil Commander, Lere Anan, although subordinate to Taur Matan Ruak following the formation of F-FDTL, remained more influential with Gusmão. This led to claims by Ruak that he was being undermined in the new structure, and he made threats to resign.

The failure of many former Falintil members to become members of the defence force, the perceived inadequacy of recognition or reintegration benefits and the poor economic situation in East Timor led to growing disquiet amongst veterans of the resistance. This disquiet coincided with disquiet amongst many members of FRETILIN, who did not

¹²² FRAP was designed to assist the social and economic reintegration of the members from Falintil not selected to join the newly established East Timorese Defense Forces (ETDF). FRAP was implemented by IOM and financed by the World Bank and USAID (McCarthy 2002: 9).

regard the new armed forces as legitimate, due to their perceived control by Gusmão. The establishment of a variety of disgruntled veterans groups began to form a powerful constituency in the lead-up to the 2001 election (Rees 2004a: 50-51).

Concern about living conditions also fuelled disquiet among F-FDTL members over a long period of time. In March 2003 the National Democratic Institute (NDI) facilitated visits for Parliamentary Committee B on Foreign Affairs, Defense and National Security to police and military installations throughout the country. After visiting the F-FDTL base in Los Palos NDI noted that “most of the soldiers, all former FALINTIL guerrillas, live at this base in overcrowded, disintegrating tents that leak water dangerously close to haphazardly hung electricity cables” (National Democratic Institute for International Affairs 2003: 8). Similarly, after visiting the F-FDTL base in Baucau they discovered that:

The living quarters at the base are tin-roofed sheds with plywood floors and walls. Each shed houses ten soldiers. There is no electricity at the base, and the only power source is a small generator used to charge batteries for communications equipment. There are also no cooking facilities; food is brought to the base from the Special Police Unit base in Baucau (National Democratic Institute for International Affairs 2003: 9).

The first battalion of F-FDTL comprised mainly former combatants from the three eastern districts of East Timor, and this caused complaint amongst people from the central and western areas of the country. More people from the west were recruited for the second battalion. These were generally younger members, who found that compared with their eastern colleagues it was time consuming and expensive to get to their home villages when they had leave. This resulted, upon their return, in disciplinary action, and in some cases dismissal,¹²³ for unauthorised absence. Complaints were made to President Xanana Gusmão, as Supreme Commander of the Armed Forces, in February 2005 alleging discrimination in promotions. In January 2006, 159 soldiers petitioned the President alleging discrimination by soldiers from the east against soldiers from the west. Responses to this event led to the crisis covered in chapter 6 (International Crisis Group 2006).

Relationship between PNTL and F-FDTL

From the beginning there has been conflict between the East Timorese police and army. The way each institution recruited its members contributed to the perception that F-FDTL carried the mantle of the armed resistance, whereas PNTL were associated with the Indonesian occupation. The predominance of easterners in the first F-FDTL battalion and a perception that westerners were dominant in the PNTL accentuated this division. Rees

¹²³ Forty-two soldiers, mainly from the western districts were dismissed in 2003.

(2006: 6) recounts a conversation with a senior Officer of the F-FDTL High Command, who was also a veteran of the twenty four year guerrilla resistance, where the officer nominated the police as the greatest threat to East Timor's security.

Initially PNTL were much better resourced than the F-FDTL, causing tensions that were exacerbated by an unclear division of responsibilities between the police and the military. Although the Constitution is clear on the different responsibilities of the PNTL and the F-FDTL, there is an absence of legislative and policy guidance on how the two organisations should work together. At a formal level this has been most apparent in the failure to devise a national security policy. At a practical level it is evident in the failure of the political elite to decide in what circumstances it is appropriate for police and military to be deployed separately or together and what procedures should be followed in the event of joint deployment.

These tensions were apparent in 2003 in the attacks in Atabae and Atsabe, described in chapter 3. The deployment of F-FDTL rather than the police in response to the attacks in Atabae and the deployment of the PKF after the attack in Atsabe were matters of great concern to the Minister of the Interior. He responded by creating the URP and the UPF, which further inflamed tensions with the F-FDTL.

Since the formation of PNTL and F-FDTL there have been attempts by F-FDTL officers to interfere in police investigations involving their members and serious assaults by F-FDTL officers on PNTL officers (United Nations 2003c: 4). In January 2004, following a dispute between an F-FDTL soldier and civilians, F-FDTL stormed a police station and a hospital, fired shots, destroyed property and took ten PNTL officers hostage, detaining them at an F-FDTL base (United Nations 2005a: 7). Three separate enquiries were established to investigate this event, including an Independent Commission of Inquiry headed by President Gusmão, a criminal investigation by the Prosecutor-General and an internal inquiry (United Nations 2004b: 2). In discussing the findings of the Independent Commission of Inquiry President Gusmão highlighted some of the grievances of F-FDTL against PNTL:

members of the Police notoriously enjoy the best conditions in terms of equipment, uniform and salary. At the top of the hierarchy is a Ministry that formulates, co-ordinates and implements internal security policy. Its organization and strength has benefited from continuous advancements. On the contrary, the F-FDTL only has a Secretariat of the State as its political and budgetary interlocutor, which is divested of support services. The Superior Council of Defence and Security has still not been created by law (Presidencia da República 2004).

Other actions that serve to undermine the police force are the different way in which the East Timorese government has responded to recommendations of the 2006 Commission of Inquiry (CoI), depending on whether it is police or military that is being examined. The CoI recommended prosecution of sixty-eight individuals, including the Minister of the Interior (who had responsibility for police), the Minister of Defence, and the Chief of the Armed Forces, as well as the further investigation of seventy more people. The Minister of Interior was prosecuted and sentenced, although subsequently pardoned. However it was always clear that both the Minister of Defence and the Chief of the Armed Forces would not face prosecution (United Nations 2006a).

In addition to the events in Atabae there are a number of occasions when F-FDTL has been deployed for inappropriate purposes. For example F-FDTL have been given responsibility for guarding key institutions, providing New Year's Eve security in 2007, and in 2009 supervising the eviction of the proprietors of the well-known City Café who were engaged in a civil dispute regarding the property. Following the attacks on the President and Prime Minister on 11 February 2008, a Joint military police Command was formed, with the PNTL placed under the F-FDTL. This is a further example of failure to distinguish between the two institutions and is discussed in chapter 7.

During UNTAET there had been an Office of the National Security Adviser and a national security council to ensure security coordination and as a mechanism for civilian oversight of both the East Timor and international security forces. From October 2001 the National Security Adviser was an East Timor citizen. UNTAET's intention was that this body would ensure continuity of civilian-led coordination, consultation and decision-making following independence, but this did not occur. The failure to develop a national security policy and supporting legislation to adequately define the respective roles of the police and military, contributed to the poor functioning of the East Timorese police. This framework on its own could not have addressed the enmities that were developing between the military and the police. However, a lack of definition regarding the roles of the respective organisations inflamed matters around several critical incidents and contributed to escalating tensions.

This was also one of the key findings of the UN Independent Special Commission of Inquiry for East Timor that investigated the events and issues contributing to the 2006 crisis:

the Commission finds that: the Government was insufficiently proactive in addressing the lack of a national security policy and problems evident within and between PNTL and F-FDTL (United Nations 2006a: 75)

In the preparations for the transition from a peacekeeping mission to a sustainable development assistance framework and as part of preparing an exit strategy, the UNMISSET SRSG convened eight transition working groups in August 2004 “to assess progress made in institutional capacity-building, identify East Timor’s remaining assistance requirements and propose how best to meet them” (United Nations 2005b: 1, 4). The Working Group responsible for examining the Roles and Working Relationships of National Security Agencies reported that there was no national security policy or framework and that

as a consequence, for some time now, a number of key decisions about the formation of special police units, legislation and other matters, have been made on an ad hoc basis. The State needs to develop a national security framework from which the roles and functions of the F-FDTL and PNTL could be more clearly defined and explained to the members of the institutions and to the public (UNMISSET n.d.: 3-4)

The report also noted that

the lack of a clearly articulated publicly expressed security policy contributes to a lack of accountability of the agencies and to a strong tendency for institutions to become personalised and politicised. Without strong civilian democratic control of the security forces, the F-FDTL and/or PNTL themselves could end up posing a security threat to the State sometime in the future (UNMISSET n.d.: 4).

The East Timorese government document “Security, Peacebuilding and Reconciliation: Priorities and Proposed Sector Investment Program (April 2005)”¹²⁴ cites “an increasingly urgent” need to develop a national security policy noting that

Such a policy framework would set out the vision and strategy for national security, and articulate clearly the specific roles of all security organs of the state, and clarify Government’s objectives for structuring, coordinating and managing national security, including its defence needs, in a prioritised and affordable manner (República Democrática Timor Leste 2005: vii).

Given that no national security policy has emerged by November 2009, it would appear that it is not as much a priority to the government as it appeared in 2005.

Although these tensions between the two forces came to the fore in the post-independence period, the problems are underlined by the decades-old differences between members of the elite, including Xanana Gusmão, Mari Alkatiri, Rogerio Lobato, Roque Rodrigues and Taur Matan Ruak, as discussed in chapter 2. All these actors continue to influence security

¹²⁴ The report has a number of hallmarks of having been written by advisers to the government. Nonetheless, it states that the report reflects policies and programs for the sector as at the time of publication.

sector context in East Timor. It is necessary to understand both what was happening amongst these players in East Timor as well as what was happening at an earlier time amongst the elite diaspora in their places of exile, such as Angola, Mozambique and Portugal (Rees 2004a: 6-7; 2004b; International Crisis Group 2006: 2-5).

The internal security situation was also confused by the continued existence of security and intelligence groups associated with CNRT and Falintil. Although the King's College study on Force Options believed that Falintil had tried to disassociate itself from security and intelligence groups associated with the former clandestine network, it noted that it was difficult to differentiate Falintil from the actions of some of its members. These groups were notable not only as 'security' groups but also as being linked to smuggling, theft and extortion. The report was one of the first sources to note the connection between these groups and the gangs in Dili (King's College 2000:16).

Arguably the one activity which would have been legitimate for F-FDTL to be involved in, according to their mandate, was border protection. However, a decision was made early on that having F-FDTL so close to the border would provide an unnecessary antagonism to the Indonesian military (TNI) forces on the other side of the border. Consequently this role was given to the newly created PNTL unit – the Border Police Unit – *Polícia Unidade Fronteira* (Human Rights Watch 2006:13).

5.3.3 Veterans

The critical role that ex-combatants play in any post-conflict SSR process is recognised in a variety of disarmament, demobilisation and reintegration (DDR) programmes. Like SSR, it has been questioned whether the high levels of expectation about what DDR can achieve in post-conflict situations is realistic. Although there are doubts that these programs on their own can address the criminal and political violence that appears to take over from the violence of the original conflict, the political importance of ex-combatants is less contested (Muggah 2009: 1-2). Rees has argued that

As the roles and responsibilities of combatants and ex-combatants develop within the post conflict security sector they will invariably seek to politically and/or otherwise profit from the political process. They will seek to benefit from the development and reform of emerging security sector institutions...Ex-combatants should therefore be viewed as key players in SSR as they consistently seek to manipulate or dominate indigenous security sector institutions. Without their consent, or participation in, will fail [sic] (Rees 2006: 9)

Rees (2006: 9) also outlines the importance of not limiting one's field of view solely to ex-combatants, encouraging inclusion of "their political leadership as well as those civilians

(including women and children) who both supported the ex-combatants, as well as were their victims during the conflict”.

Much of the DDR literature claims that ex-combatants suffer economic, social and political marginalisation or ‘remarginalisation’, and that this in itself provides an explanation for frequent re-engagement in organised violence. However Nilsson, in his work on ex-combatants in Republic of Congo and Sierra Leone, argues that whereas these factors will provide conditions conducive to violence they are insufficiently explanatory on their own. Instead Nilsson (2008: 16) argues that

as former fighters often lack resources and leadership skills, they are likely to be dependent on the presence of some type of remobilisers – individuals who have the will, capacity and ability to coordinate organized violence in a post-conflict setting – to help them take the step from passivity to armed action. More specifically, this may necessitate the involvement of domestic or regional elites, as well as second-tier actors – such as local politicians, communal leaders or former mid-level commanders – that can act as intermediaries between elites and ex-combatant communities.

Nilsson’s argument regarding ‘remobilisers’ is similar to the idea of ‘entrepreneurs in violence’ discussed in chapter 2. I would argue that such remobilisers or violence entrepreneurs are present in East Timor and are more able to effectively carry out their objectives in situations where actors, organisations and parts of organisation have multiple and shifting alliances and where the Weberian ideal of a monopoly on the (legitimate) control of violence does not apply. This will be discussed further in Section 5.3.4.

The role that former veterans play in the development of East Timor’s security sector and the popular imagination is of great importance. Veterans are accorded great, almost religious, status in East Timorese political culture. Yet deciding who is a veteran is not a straight-forward matter. Large numbers of people registered as veterans for the FRAP process (outlined below), including a vast number of non-veterans – including former militia, former soldiers in the Indonesian army, and spies for the Indonesian intelligence.¹²⁵ Determining who had served with Falintil was also not straight-forward as people were involved at different times, and there was an extensive network of *clandestinos*, usually not known to each other, who supported the work of Falintil (Scambary 2009c: 268) The civilian cadres and *clandestinos*

were responsible for internal political organisation and intelligence; they facilitated communication and supported the armed resistance with supplies, logistics and intelligence. Many suffered similar consequences to

¹²⁵ Pers. Comm. James Scambary 18 November 2009.

those in the armed resistance, including torture, rape, arbitrary arrest and imprisonment, and killings (Kent 2006: 1).

Four disarmament, demobilisation and reintegration (DDR) processes have been carried out in East Timor, two under international auspices and two by the East Timorese government. These are the Falintil Reinsertion Programme (FRAP) and the RESPECT programme, which were implemented by IOM and UNDP respectively. The Presidential Commissions¹²⁶ and the establishment of a Department of Veterans' Affairs were initiatives of the East Timorese government, funded by international donors. An assessment of these veteran's initiatives, carried out by Peake (2009) concludes that some of these programs were of limited success but that longer term socio-economic advancement of veterans has not occurred. In fact many of the veterans interviewed could no longer remember if they had received any benefit from the programmes. Peake has pointed out that from the beginning veterans were considered a problem to be 'solved', and in a limited way they were solved, enabling the establishment of the police and military without initial adverse security consequences. However, it appears that many veterans feel they have not received a proportionate dividend from independence, on the contrary they feel they are poorer and more marginalised than many other members of society (Peake 2009: 168, 175). Only veterans with service of fifteen or more years are currently eligible for the pension; those who served between eight and fourteen years become eligible once they turn fifty five. This leaves a group of ineligible and disaffected younger veterans (Sousa-Santos 2009: 4).

Many of the martial arts and ritual arts groups involved in the crisis of 2006 and violence of 2007 have origins in clandestine and guerrilla organisations as well as close links to PNTL, F-FDTL, political parties and economic elites (Sousa-Santos 2009: 4-5). Their vulnerability to remobilisers and conflict entrepreneurs is substantial, captured in a quote in Sousa-Santos (2009: 1): "Are we forgotten heroes or bandidos? And if they continue to call us bandidos, we will show them bandidos".

5.3.4 Other providers of security and insecurity

For a long time in East Timor security has been provided by a variety of state and non-state actors, with an unclear delineation between them. As noted in chapter 3, everyday security continues to be substantially provided by an assortment of community leaders

¹²⁶ Three Presidential Commissions were formed in order to compile registers of veterans with view to providing both recognition and financial compensation. The *Comissao para os Assuntos dos Antigos Combatentes*/Commission for Matters of Ex-Combatants (CAAC) registered ex-combatants who served between 1975 and 1979; the *Comissao para os Assuntos dos Veteranos das Falintil*/Commission for Matters of Veterans of Falintil (CAVF) identified cadres involved in the armed resistance in subsequent years. The *Comissao para os Assuntos dos Quadros da Resistencia*/Commission on Cadres of the Resistance (CAQR) registered civilian cadres and clandestinos (Peake 2009: 177; Kent 2006: 1).

including *suco* chiefs, *aldeia* chiefs, and elders, with only five percent of East Timorese believing the police are primarily responsible for law and order (Everett 2009: 20). In addition there are a significant number of private security guards working in East Timor, providing security for the UN, international NGOs, embassies, and the private sector, with employees of the three main companies outnumbering the PNTL. Private security guards are not currently licensed to carry firearms, although they do use batons and tasers (Parker 2009: 4). There is concern that this could change with consideration of legislation providing for private citizens to carry firearms.¹²⁷

In chapter 2 I argued that there is a long history of the use of auxiliaries by members of the political elite and the state security forces in East Timor. The prevalence of these auxiliaries is underpinned by a martial heritage and a history of shifting alliances. This can be traced from pre-colonial contact and was bolstered and developed through foreign support during the Portuguese colonial period and the Indonesian occupation. All of these factors are still evident in 2009 in the form of multiple and overlapping providers of security and insecurity.

Establishment and support of martial arts groups and youth groups by Indonesian military and intelligence agencies was widespread in Indonesia, with groups such as Pemuda Pancasila comprising *preman*, or standover men, being both legitimised and used when needed by the state. The practice extended to East Timor, with groups being established at the time of invasion and again in the 1980s and 1990s. These groups were trained by Kopassus and used as part of the counterinsurgency strategy of the Indonesian occupation (Brown and Wilson 2007: 373-374; Nixon 2008: 166; Scambary 2009b). Similarly the 1999 militias were creations of the Indonesian military, with their organisation and mode of operation drawing on identifiable models from both colonial and pre-colonial history in East Timor as well as similarly recognisable models in Indonesia (Robinson 2006: 274-276). Not only were militia groups established and supported by the Indonesian military, but Indonesian military officers were also sometimes members of militia groups. For example, the Saka militia group was entirely made up of TNI soldiers from Baucau *Kodim* (CAVR 2005: Section VII, 100).

A number of new 'security groups' emerged when Falintil was demobilised, although it appears that few were actually ex-Falintil. These included the Association of Former Combatants of 1975 (AFC '75), Council for the Popular Defence of the Democratic

¹²⁷ For commentary on the Draft Arms Law see Parker (2008).

Republic of East Timor (CPD-RDTL), Sagrada Familia, and Colimau 2000, with a variety of agendas that included political and military participation, non-recognition of the state and/or F-FDTL, as well as economic promotion through extortion, smuggling and other criminal activity. Many of the groups are millenarian in character, promising to bring back to life dead guerrilla leaders from the jungles (Jolliffe 2004). These groups caused alarm among many internationals, including CIVPOL and other UN staff, and East Timorese, including members of F-FDTL, ETPS and veterans, because they engaged in military training and had access to traditional and modern weapons (McCarthy 2002: 97-101). In turn the groups experienced heavy-handed treatment at the hands of the East Timorese police (Jolliffe 2004). When I drove past one of these military drills in the Dili suburb of Matadouro in 2002 with my East Timorese colleague, a member of the clandestine movement, he was highly dismissive of the group's claim to be veterans, noting that most of the group were far too young to have been veterans. These groups were readily vulnerable to the actions of a conflict entrepreneur such as Rogerio Lobato.

The contemporary diversity and extent of martial arts groups (MAG), gangs and other armed groups in East Timor is nothing short of extraordinary. Contrary to the stereotype of such organisations as comprising mainly young unemployed men, GTZ-IS found that

MAG members and practitioners are found in all strata of society, from educated professionals (often the leadership) to uneducated and unskilled, from wealthy to poor citizens, from political moderates to radicals. Groups are ethnically diverse and some have women members (GTZ 2007: 5).

Scambary has produced a typology of gangs and other armed groups, showing that they differ in geographic range, territorial control, origins, composition and number, levels of formal control over members, as well as in their political allegiances, grievances, modes of operation, and use of syncretic magic ritual. He broadly classifies the groups into disaffected groups, such as CPD-RDTL, Colimau 2000, and Sagrada Familia; clandestine groups such as 7-7, 5-5, and Bua Malus; Martial Arts Groups (MAG), such as PSHT, KORK, Kera Sakti and Kung Fu Master; Political Front Groups, such as MUNJ; Gangs such as Ameu Van Damme, Commando Comoro Market Gang and many others that have no name; Youth Groups, such as Slebor and Predator; and various informal security groups such as those made up of 'petitioners' and the 'isolados' (Scambary 2009b, 2006, 2009a, 2009c).

Reasons for the emergence of a range of non-state providers of security include inability to reach or dissatisfaction with state-provided security, feelings of disenfranchisement, and high youth unemployment. There are also various historical and continuing conflicts over

land and other resources, such as markets or the proceeds from border smuggling, which continue to influence the activities, allegiances and enmities, and prominence of many security groups. Some inter-village tensions have long antecedents, with actors in 2002 resource conflicts in Viqueque citing divisions from the anti-colonial rebellion of 1959 as influential. This had morphed into a later pro- and anti- Indonesian integration split, and was subsequently claimed to be behind contemporary buffalo thefts (Gunter 2007: 37).

Scambary suggests that the common feature of otherwise diverse contemporary armed groups is that the groups tend to be organised around a charismatic leader and/or on the basis of extended family grouping. In such groups the leader is the source of welfare and credit, and small items like cigarettes and alcohol. Members in turn provide loyalty, mutual protection and are available to be mobilised (Scambary 2009a). This kind of neo-patrimonial relationship is consistent with the phenomenon of *liurai*-ism discussed in chapter 2. Such groups are also mobile, fluid and hard to pin down. This is in keeping with the character of Timor's martial heritage and practice of shifting alliances, also described in chapter 2. It is evident in the mobile and opportunistic alignments with political leaders, political parties, criminal figures, current and former members of state security organisations, and with other groups. Individual members of groups, and conflicts associated with groups, have a tendency to move back and forth between Dili and districts of origin - changing in nature and intensity as they do so. From Scambary's descriptions one can conclude that conflicts can both 'morph' and be cryptic. The morphing of conflict can occur when a conflict commences around one issue and as other actors get involved changes into being about other things. Conflicts can be cryptic in that they may appear to be about, for example, political differences, but may actually relate to longstanding problems related to land tenure or between extended family groups. Groups can disband and reform. Both individuals and groups 'repackage' themselves. Non-state security actors can be either providers of security or insecurity, depending on whose perspective is being taken, who the group is currently aligned with or in some cases on a 'repackaging' of extant groups. It has been noted that the line between formal and informal providers of security in Indonesia has always been politically and legally ambiguous (Robison, Wilson, and Meliala 2008: 2). The same can be said about East Timor.

Quantifying the extent to which members of the PNTL or F-FDTL are also members of other security groups is difficult, for obvious reasons, and relies on often unverifiable allegations. Myrntinen (2007: 16) notes that "relatively high number of members of the Timorese police force are involved with major gangs such as PSHT, Colimau 2000 and 7-

7". Separately he recounts that "the Baucau PNTL district commander¹²⁸ is allegedly a member of the Kera Sakti martial arts group which is battling PSHT (who, on the other hand, apparently count a local PNTL sub-district commander as a member in their ranks) for dominance in the city" (Myrntinen 2008).¹²⁹ Reportedly, the next PNTL District Commander, Adérito Neto, was also a gang member, though his successor is not.¹³⁰

Former PNTL Baucau District Commander, Pedro Belo, is now the Dili District Commander. The Dili PNTL Task Force, established in late 2007, is sometimes seen as little more than a gang, with one UNMIT informant telling me that the Task Force is 'owned' by Belo.

The case of former PNTL Dili District Deputy Commander Abilio "Mausoko" Mesquita is also illustrative of a high ranking PNTL member who doubled as a senior member of the PSHT gang (Scambary 2009a:5). In this role he is reputed to 'control' the Audian area of Dili. Dili is broken into areas of control, with different groups running protection rackets and controlling gambling.¹³¹ While still a member of the PNTL, Mesquita also led ten PNTL officers in an armed attack on the house of F-FDTL's Brigadier Taur Matan Ruak on 24 and 25 May 2006 (United Nations 2006a: 32, 49). He was recommended for prosecution by the Commission of Inquiry and sentenced to three years and three months jail on 6 August 2007, for theft and using a firearm with intent to disrupt public order. This was overturned on appeal, as the Court of Appeal found that the panel of judges had not been properly constituted. Mesquita was acquitted of manslaughter on 13 March 2008 in relation to the attacks (OHCHR and UNMIT 2008: 5), pending what seems to be an elusive retrial. Mesquita never registered for the PNTL screening process discussed in chapter 6, continuing to work for some time unregistered, but was finally dismissed by the Minister for Defence and Security in June 2009.¹³²

As well as the problem of 'multiple memberships' discussed above there appears to be an increasing tendency for people with security sector context in East Timor to 'repackage' themselves. A historical perspective on such 'repackaging' has previously been noted in Indonesia by Brown and Wilson (2007), with a particular focus on the repackaging of

¹²⁸ At the time this was Pedro Belo. Pers Comm Henri Myrntinen 30 April 2009.

¹²⁹ One of the members of the Joint Field Assessment Team assessing PNTL's readiness for handover in 2009 estimates that 80% of Baucau PNTL are members of gangs, evidenced by their gang tattoos. Pers. Comm. May 2009.

¹³⁰ Pers. Comm JFAT member May 2009.

¹³¹ Pers. Comm. James Scambary 1 May 2009.

¹³² Pers. Comm UNMIT HRTJS staff member, 26 August 2009.

Jakarta-based gangs such as the Betawi Brotherhood Forum to utilise a 'gap' in security provision following the demise of the New Order.

In relation to East Timor militia leader Eurico Guterres is a good example of someone who has engaged in constant opportunistic repackaging of himself in a variety of different (in) security guises.¹³³ In Dili he was involved in minor criminal activities, reputedly prostitution and gambling including cockfighting. He was detained in 1988 by military intelligence for alleged involvement in a plot to kill President Suharto and subsequently 'turned' to become an informer for Kopassus. He was recruited by Prabowo into *Gardapaksi* (*Garda Pemuda Penegak Integrasi* – Youth Guard for Upholding Integration) in 1994, but some time later the organisation went into abeyance. In early 1999 he was given Rp 50 million by Maj. Gen Adam Damiri to revive *Gardapaksi*, and the organisation was recast as '*Aitarak*', which was to become a leading pro-Indonesian militia organisation in the lead up to the referendum. During 1999 Guterres engaged in many acts of violence, incitement and intimidation, in constant contact with his very senior Indonesian police and military sponsors. These included attacks on the house of Manuel Carrascalao (McDonald et al. 2002: 164-167). Guterres was indicted for crimes against humanity by the SPSC in Dili and convicted of crimes against humanity by the Ad Hoc Court of Human Rights in Jakarta, though subsequently his conviction was overturned by the Indonesian Supreme Court in 2008 (JSMP 2008). Subsequent to his activity in East Timor his repackaging, with the sponsorship of a wide and various range of Indonesian political and military leaders, really took off. Having been a parliamentary candidate for political party Golkar in 1999, he later was made head of a PDI-P (another political party) security organisation by Megawati and most recently was a candidate for PAN, a moderate Islamic party, in the 2009 Indonesian elections. At other times he was the head of an Anti Communist Alliance (AAK), allegedly supported by Golkar, which intimidated bookshops and established and trained militia in West Papua to counter separatist movements in the province (McDonald et al. 2002:164-167; Kearney 2003; ABC The World Today 2009).

Another figure still resident in East Timor who illustrates the process of repackaging is Vicente da Conceição (alias Railos, or 'true land'). Railos had been a member of Falintil who was integrated into the F-FDTL at the time of its formation. He was sacked from F-FDTL for misappropriation of funds in 2003. The Report of the Special Commission of Inquiry in October 2006 details how during the crisis Railos, together with thirty-one

¹³³Guterres, originally from Viqueque, initially claimed that his parents had been killed by the TNI, due to their pro FRETILIN views, at the time of the Indonesian invasion. He later changed this story to their having been killed by FRETILIN (McDonald et al. 2002).

members of a civilian militia called the 'Railos group', were supplied with arms and uniforms and travelled to Tibar (on the outskirts of Dili) on the instruction of then Minister of the Interior, Rogerio Lobato. According to the CoI, Railos and his group, apparently disguised in police uniforms (International Crisis Group 2009a), together with PNTL officers from Liquica and civilians, were reasonably suspected of involvement in the killing of as many as nine people and seriously injuring a further three people on 24 and 25 May. As a result the CoI recommended that Railos and named members of his group be prosecuted for crimes against life and the person, and for illegal possession, movement and use of PNTL weapons (United Nations 2006a). Railos was pivotal in the resignation of Prime Minister Mari Alkatiri in 2006, having alleged the Prime Minister ordered Rogerio Lobato to supply Railos and his groups with high powered weapons, including assault rifles, and 6 000 rounds of ammunition, together with a hit list of those hostile to the government. This was always denied by Alkatiri. Following investigation no charges were laid by the Prosecutor-General (ABC PM Program 2007). Subsequently there has been a perception that Railos is allied with Xanana Gusmão. Although in November 2006 José Ramos-Horta was publicly demanding that Railos surrender his weapons or suffer dire consequences (Adnkronos International 2006), five months later he appointed Railos as his principal campaigner in Liquica and Ermera districts during the first and second round of the 2007 presidential elections. During this time it was reported both by FRETILIN and the EU Election Observer mission that Railos and his men were involved in a number of incidents of violence and intimidation against FRETILIN members and supporters throughout Liquica and Ermera districts. Railos also fulfilled the role of Liquica district coordinator for CNRT in the parliamentary elections and was present at the FRETILIN *Mudansa* (a breakaway group from FRETILIN) convention on 28 May 2007 (International Crisis Group 2007: 8). Railos was arrested in late 2007 for the 2006 offences and charged with manslaughter, threatening violence, unlawful deprivation of liberty, and the illegal use of firearms in connection with the armed confrontation in Tibar. He was jailed pending trial but after eight months was allowed to go to Surabaya for medical treatment but did not go back to prison upon his return to East Timor. Railos' trial was rescheduled in October 2008 for January 2009 (Radio Timor Leste 2008b), then adjourned until April 2009 (OHCHR and UNMIT 2009: 12), being delayed once again in October 2009 (Radio Timor Leste 2009).

While I do not maintain that there is any particular similarity between Guterres and Railos as people, both examples illustrate the phenomenon of 'repackaging' of security actors in accord with a history of mobile conflicts and shifting alliances. This kind of repackaging is

not something one can undertake alone but relies on the support of one or more political elite patrons who continue to provide 'employment' and assist by providing impunity when security actors break the law.

Further 'repackaging' or 'rehabilitation' of Indonesian military figures (and their associates) as business investors in East Timor is arguably a similar phenomena that relies both on the patronage of the East Timorese political elite and a prevailing culture of impunity in order to be successful. Figures such as Hercules Rosario Marcal – who was born in East Timor but is now a high profile Jakarta gangster and previously worked as an 'enforcer' for Suharto era generals, intimidating dissidents and East Timorese independence supporters – has made a reappearance as a businessman in Dili (Murdoch 2008). In Jakarta Hercules at one time lived with Major General Zacky Anwar Mackarim, who had been the most senior military officer in Timor during the Indonesian occupation. Zacky Anwar was indicted by the SPSC in Dili for murder, deportation and persecution as crimes against humanity (McDonald et al. 2002:173 ; Murdoch 2008). In January 2008 Hercules visited Dili and met with Prime Minister Xanana Gusmão, and visited as part of a high level Indonesian business delegation in February 2008. He was subsequently granted permission by the government to develop a refugee camp site as a supermarket and swimming pool and has made it known that he is looking for other investment opportunities. A garden commemorating the 5 May agreement was opened, on 5 May 2009, sans supermarket and swimming pool. Many international ambassadors attended the event.¹³⁴ Reportedly PNTL General Commander Longuinhas Monteiro has close links with Hercules who organises his hotels and other arrangements when Monteiro is in Jakarta (UNMIT 2009). Two men accused of the February 2008 attacks on the President and Prime Minister were arrested at Hercules' house in Jakarta (Murdoch 2008). Similarly, Tommy Winata, an Indonesian businessman, regarded as a 'banker' for the Indonesian military, has been given approval by the East Timorese government to build a shopping complex and hotel on government land without any tendering process taking place (Murdoch and Hyland 2009).

5.4 Conclusion

The (in) security groups, their members and supporters, raise a number of important issues in relation to the development of the PNTL. Firstly, the widespread use of groups and individuals other than PNTL members for the maintenance of law and order and internal security by ordinary members of the community clearly indicates that the state does not maintain a monopoly on the use of violence as envisaged in the Weberian model. This

¹³⁴ Pers. Comm. Bilateral security adviser May 2009.

raises the question of how successful the implementation of this state-centric model by international police-builders can be, if they overlook the current importance of non-state security providers. It also raises the related question of whether scarce resources are being appropriately allocated if the desired end result is an improvement in security for 'end-users'.

The utilisation of these groups and individuals within them by a great number of members of the political elite indicates that the political leadership in East Timor is as ambivalent about the Weberian model of state monopoly on the legitimate control of violence as they are about the rule of law project. While the political elite continue to variously support, arm and protect the criminal activities of these actors, a culture of impunity is entrenched. This lack of 'local ownership' of the Weberian project ensures that it will not be successful.

The reportedly widespread overlap between members of the PNTL, and to a much lesser extent the F-FDTL and a variety of disaffected groups, martial arts groups, gangs and informal security groups means that members of the security forces have distinctly compromised loyalties and identities. This makes it difficult for their respective institutions to establish unified command structures and integrity of purpose. It becomes unclear which institution or institutions PNTL members are working for at any given time. In addition, PNTL members may also be operating from personal or familial loyalties or in deference to a part of the PNTL personally controlled by a powerful individual. Myrtilinen has argued that the minimal wage paid to PNTL also serves as an incentive to increase their earnings through other such activities.

Because group alliances shift, conflicts are concealed or transformed and individuals 'repackage themselves, it becomes difficult for international police-builders and those assisting the East Timorese government with SSR to understand the context of their work.

Chapter 6

Crisis and reconstruction

6.1 Introduction

This chapter analyses the (re)construction of the PNTL through an examination of two UNMIT mandated processes: the reform, reconstruction and rebuilding (RRR) of the PNTL, and the review of the security sector. This analysis is an opportunity to interrogate the responsiveness of the UN to their country specific and global experiences in police-building since their first attempts to build the PNTL. In chapter 3 I examined the construction of the PNTL under international and national direction from the inception of the organisation until early 2006. Chapters 4 and 5 placed this process in a rule of law and security sector context respectively.

I commence with a brief description of the ‘crisis’ of 2006 which saw the Headquarters and Dili-based parts of PNTL cease to function and the Minister of the Interior, the Minister of Defence and the Prime Minister forced to resign. I give an account of the immediate bilateral interventions and the subsequent commencement of the United Nations Integrated Mission in Timor-Leste (UNMIT), its accompanying mandate and mechanisms designed to reconstruct the PNTL. This is followed by an analysis of the reform, reconstruction and rebuilding of PNTL process as designed and implemented. I continue with an analysis of the Security Sector Review process.

I focus on the difficulties of establishing working relationships between UNMIT and successive East Timorese governments and between UNPOL and PNTL. I also concentrate on the respective shortcomings and capacity problems of these institutions in fulfilling their mandates. I argue that these issues of relationship, contested sovereignty and capacity are interacting to institutionalise fragility in the PNTL, with many of the problems identified in the first attempt to build the PNTL still in evidence. Similarly, I contend that both the UN and the East Timorese government have been more focused on form than substance, engaging in forms of ritualism designed to give a sense that progress is being made. This regulatory ritualism serves to obscure the gulf in understanding and culture between the UN and the East Timorese political leadership.

6.2 Crisis and intervention

The proximate cause of the crisis was the sacking of 591 members (or approximately one third) of the F-FDTL in March 2006, a group that came to be known as ‘the petitioners’. The petitioners were almost exclusively from western districts, and they alleged discrimination towards members of F-FDTL from the west of the country by members

from the east.¹³⁵ The majority of higher ranking F-FDTL members are drawn from the east of the country. The 'crisis' of April and May 2006 continues to influence and inform political developments in East Timor. During the crisis itself East Timor saw widespread fighting between and within the uniformed security forces, the almost complete cessation of government functionality,¹³⁶ the resignation of multiple government Ministers, widespread violence, the displacement of approximately 150 000 people, extensive destruction of housing stock and the deaths of at least 38 people (United Nations 2006a: 3).

In response to the crisis the East Timorese political leadership requested military and police intervention from Australia, New Zealand, Portugal and Malaysia. Initially 2 200 personnel were deployed.¹³⁷ Subsequently the government requested the establishment of a new UN mission.¹³⁸ Australian police peacekeepers from this early deployment, named Operation Serene, have recounted the sense of disorientation they experienced upon arrival in Dili. The policing skills required of them were very different to those used at home and they did not have a good understanding of the cultural, political and geographic terrain. They detail the volatile environment, fuelled by rumour and gossip, the difficulty in getting East Timorese to believe they were non-partisan and the limited impact that they felt they were having on constantly shifting conflicts (Goldsmith 2009a).

The most authoritative and comprehensive account of the crisis is contained in the Report of the UN Special Commission of Inquiry (the CoI) conducted by the UN Office of the High Commissioner for Human Rights (OHCHR). The CoI was requested of the UNSG by Minister for Foreign Affairs José Ramos-Horta. The resulting CoI was mandated

- (a) To establish the facts and circumstances relevant to incidents on 28 and 29 April, 23, 24 and 25 May and related events or issues that contributed to the crisis, including issues related to the functioning of the security sector;

¹³⁵ The group of disgruntled F-FDTL officers had outlined their grievances in a petition to Brigadier-General Taur Matan Ruak and President Gusmão in early January 2006. Unsatisfied with a lack of response by early February, they abandoned their barracks, leaving their weapons behind. They sought an interview with the President. A Commission of Inquiry to examine the petitioner's allegations was formed but failed to resolve the problems between the petitioners and the F-FDTL High Command. The petitioners then took leave and did not return. They were subsequently sacked by Brigadier-General Ruak in March, a move supported by then Prime Minister Alkatiri but opposed by then President Gusmão.

¹³⁶ The Ministry of Health and the Ministry of Labour and Solidarity continued to function during this time.

¹³⁷ ICG has noted that arrangements between deploying countries were fraught with Portugal unwilling to operate under Australian command (International Crisis Group 2009b: 4).

¹³⁸ Following the crisis of 2006 the UN initially extended the UNOTIL mission which had been due to close. The President, the President of the National Parliament and the Prime Minister sent a request to the UNSG on 11 June for a UN police presence until such time as the PNTL had been reformed. This was followed by a statement from the Minister of Foreign Affairs two days later that also stressed the importance of a UN police force and a multinational military presence.

- (b) To clarify responsibility for the above-mentioned events;
- (c) To recommend measures to ensure accountability for crimes and serious violations of human rights allegedly committed during the above-mentioned period, taking into account that the East Timor government considers that the domestic justice system, which has the participation of international judges, prosecutors and defence lawyers, should be the primary avenue of accountability for these alleged crimes and violations;
- (d) To report its findings within three months of its establishment through the United Nations High Commissioner for Human Rights to the Secretary-General and the National Parliament of East Timor (United Nations 2006a: 11-12).

The causes of the crisis were complex and multiple, and reflected deep-seated and longstanding divisions within East Timorese society. These divisions have in turn been overlaid with conflicts of more recent origin. The CoI report stated that the causes of the crisis

can be explained largely by the frailty of State institutions and the weakness of the rule of law. However, this explanation can only be understood fully in the historical and cultural context of the country. Both the Portuguese and Indonesian eras created and subsumed internal divisions within Timor-Leste. Political competition within Timor-Leste has been historically settled through violence. Accordingly, many Timorese view the events of April and May 2006 as a continuum starting from the decolonization process in 1974/75 and encompassing the violence and factionalism of the Indonesian occupation and the violence that accompanied the United Nations-sponsored Popular Consultation in 1999 (United Nations 2006a: 16).

Many other organisations and individuals have conducted analyses of the causes and development of the crisis (Brady and D.G. Timberman 2006; International Crisis Group 2006; Myrtilinen 2007; Trindade and Castro 2007; Kammen and S.W. Hayati 2007; Dewhurst 2008; Prüller 2008; Reckinger and Devant 2008; Scambary 2009c). They proposed complexes of underlying factors, which variously include the matter of who was excluded and included in creating both the PNTL and the F-FDTL, the difficulties of transforming former guerrilla fighters to a regular armed force in post-conflict situations, longstanding divisions between the political elite, communal tensions between easterners and westerners,¹³⁹ manipulation by elite actors¹⁴⁰ and conflict entrepreneurs, lack of

¹³⁹ The division between easterners (firaku or loros'ae) and westerners (kaladi or loromonu) engendered considerable scholarly and popular debate during and after the crisis. I would argue much of the debate centred on whether these were 'genuine' historical divisions or, to use Hobsbawm and Ranger's (1983) term, an 'invention of tradition'. For an extensive discussion of this matter see Prüller (2008). McWilliam (2006) summarises some of the key points described in Dionisio Babo Soares thesis (2003) regarding the division between 'talkative and excitable firaku'(easterners) and 'taciturn and closed kaladi' (westerners). Although the origins are unclear, it is thought this idea may have "originated during the Second World War, when Macassae people from Baucau (easterners) and Bunak people from the western highlands settled in Dili and commenced trading in a local market. Over time commercial rivalries arose around this distinction, which

regulatory frameworks, legacies of trauma, violence and displacement that had led to a 'culture of violence', and high levels of fear and distrust of those deemed to be 'others'. These factors were compounded by very high rates of unemployment and poverty in East Timor, a sense that the 'dividend' of independence had not been realised, economic territorialism, cycles of personal payback, and a worsening food security situation. For the purposes of this thesis I focus on those aspects of the crisis that had direct bearing on the institutional character of the PNTL, its relationships with other organisations and key political figures, and the security situation that surrounded the reconstruction process of the PNTL.

On 28 April 2006 the PNTL lost control of what had started as a petitioner's demonstration five days earlier. Vehicles were burnt outside the government palace, offices were ransacked and police fired into the crowd. Two civilians were killed and four civilians and two PNTL officers were injured. Violence spread outward from the government palace. The F-FDTL were authorised to deploy in unclear circumstances. By this stage chains of command in both the PNTL and F-FDTL were becoming fragmented and there was a sense that the security forces were unravelling. Peake describes the sense of disarray and mobile fealties:

The majority of the Policia Nacional de Timor-Leste (PNTL) in the capital, Dili, dissolved into separate and competing factions. Some parts of the PNTL fought each other, others fought members of the defence force, others donned the uniform of the defence force to fight fellow police officers, others still went home. Paulo Martins, commissioner of the PNTL

continued and evolved over the decades into a kind of default cultural division that is now being evoked in the current struggles". McWilliam also suggests these divisions were accentuated after 1999 when there was significant inward (and chain) migration into Dili. At this time different ethno-linguistic groups became associated with different parts of the city, manifesting as fighting between different areas and associated gangs. A further aspect of the story relates to antagonism between westerners and easterners, centred on the contested allegations of easterners that westerners were more aligned with the occupying Indonesian forces and contributed less to the resistance. Similarly, it has been noted that the most destructive of the Indonesian-sponsored militia operated in the west, rather than the east of the country, further reinforcing the contention of Easterners that Westerners were pro-Indonesian, received the greater benefit of the occupation and made the fewest sacrifices during this time (McWilliam 2006). Those who argued that the east/west division is a recent phenomenon cite the fact that no one makes reference to it in any of the testimony collected by the CAVR. During four years living in East Timor I was aware of the purported difference in personality, but it was generally the subject of office banter and amounted to nothing serious. On one occasion, though, in 2003 the organisation of which I was Director received a visit from a staff member of another local NGO who was concerned that we were developing a reputation for preferential employment of people from the east of the country. I pointed out that we had just employed someone from Oecussi and was informed that that did not really count as it was outside of the east/west schema. Following the crisis many NGOs were seriously hampered in their work by division between officers from the east and west.

¹⁴⁰ Criticism has been leveled at then President Xanana Gusmão for a speech on 23 March 2006 in which he referred to the east/west division. The CoI found that the speech was "perceived as divisive and the President should have shown more restraint and respect for institutional channels by exhausting available mechanisms before giving the speech (United Nations 2006a: 75-76).

took, quite literally, to the hills around the capital, Dili. He never came back (Peake forthcoming).

By early May 2006 the security situation in East Timor was deteriorating rapidly. On 3 May Major Alfredo Reinado¹⁴¹ abandoned the Military Police of F-FDTL, taking with him other military police officers, PNTL officers and weapons. Later this group ambushed both PNTL and F-FDTL officers and lives were lost. From 8 May the Minister of Interior started arming civilian groups with weapons taken from the UPF, and also provided URP uniforms to one group. Subsequently one of the civilian groups, the Rai Los Group, attacked F-FDTL and five people were killed. Attacks occurred on the houses of the Chief of the Armed Forces on 24 May and on a house belonging to relatives of the Minister of Interior on 25 May, with people killed on both occasions. By 24 May, the same day that the F-FDTL started arming civilians, the internal security situation had become so dire that the East Timorese government felt compelled to request urgent international military and security assistance. On the same day the President, Prime Minister and President of the Parliament of East Timor communicated to the UNSG that they had undertaken this action, explaining that they had done so “in a bilateral framework taking into account the delay that a decision under the mandate of the United Nations would imply”; the letter, however, continued with a request that the action be endorsed by the Security Council. The following day, 25 May, nine unarmed PNTL were killed and 27 persons suffered serious gunshot injuries (United Nations 2006g: 2).

Many people claimed that the PNTL had collapsed during this period, although the collapse was largely confined to Dili and two other districts. In the remaining ten districts PNTL members continued to go to work. Following the collapse of the Dili-based PNTL, the instability in Dili entered another stage, characterised by widespread gang warfare centred on former clandestine resistance figures. This resulted in an escalation of regional divisions, the burning of 2 000 houses over a period of six months and widespread displacement, primarily of easterners, into internally displaced persons (IDP) camps and back to villages of origin. This stage of the conflict also featured turf wars over control of major commercial centres, markets, bus routes and gambling rackets, and clearly-orchestrated attacks on IDP camps. Life for those from the east became increasingly

¹⁴¹ Major Alfredo Reinado was the head of the military police of F-FDTL. Following orders to hunt down the deserting petitioners headed by Gastão Salsinha during the crisis of 2006, Reinado deserted and joined the petitioners. He was subsequently involved in fatal clashes with F-FDTL and PNTL on 23 May, captured by Portuguese and Australian troops in July, and led a prison breakout in August 2006. The government, and more particularly individuals within the government, conducted an ‘on again, off again’ process of alternately pursuing and negotiating with Reinado over the following almost two years. Alfredo Reinado continued to play a major role in the events of the next two years before being killed in an attack on the President’s house on 11 February 2008. For an insightful account of the life and death of Alfredo Reinado see Niner (2008).

difficult. Although international peacekeepers had some effect on this violence, it continued throughout most of 2006 (Scambary 2009c: 276). In 2007 new alliances and antagonisms emerged. Conflict between two martial arts groups, PSHT and Colimau 2000, spread through the western highlands and finally to Dili, drawing in other groups and escalating violence as it spread (Scambary 2009c: 278). One of the explanations for this particular conflict is that it is a reproduction of an old conflict that has been 'on the back burner' since Portuguese times, with even earlier antecedents being clashes between two ancient kingdoms in the region of Atsabe. These divisions are evidenced in modern economic struggles, in which access to scarce resources falls to those who can trace their origins to the Tiar Lelo ruling house. Those with this connection are strongly represented in the district administration, the local PNTL, and as owners of the largest and most productive tracts of land and the biggest coffee plantations (Molnar 2006: 348).

The events of the crisis are complex; and who did what (and why) can be difficult to follow. However, it is clear that the events are infused with a number of the legacies of history first identified in chapter 2. Many senior political and security figures operated outside their institutional mandates and the law, relying instead on networks of personalised power and patronage that had more to do with relationships formed during the resistance and others based on regional alliances. Although senior actors in the crisis relied extensively on exercise of personal power, this personal power was significantly augmented by their formal positions (e.g. as Minister of the Interior, General-Commander of PNTL, or Commander in Chief F-FDTL) and the access to weapons and other resources that these positions provided. The crisis was also characterised by patterns of shifting and opportunistic alliances. Within these shifting alliances there was a tendency for membership of the uniformed forces to have greater loyalty to other powerful individuals, networks and organisations than to the formal institutions of state to which they also belonged. This was also evident in the high numbers of members of both the PNTL and the F-FDTL who abandoned their post to form alliances with other groupings. The conflicts were cryptic: contemporary conflicts between, for example, martial arts groups could also be referenced back to longstanding conflicts about access to land, housing or other economic resources. The conflicts were labile: what was able to be characterised initially as an east/west conflict later transformed into rivalries between martial arts groups. The conflicts were mobile, they were either transported back and forth between members of ethno-linguistic groups travelling between residences based in Dili and their places of origin, or, as described above, spread through the Western highlands before turning up in Dili.

Failures of the security institutions are central to the crisis of April/May 2006. Problems within PNTL and the Ministry of Interior had been apparent for some time, but the crisis served to bring to international attention major developmental, legitimacy and performance issues. It also highlighted the divisions within and between PNTL and F-FDTL. Members of both PNTL and F-FDTL and their respective oversight Ministries, the Ministry of the Interior and the Ministry of Defence, were directly involved in the violence of April and May 2006.¹⁴² Many PNTL officers and the Minister of the Interior were recommended for prosecution or further investigation by the CoI. The PNTL General-Commander was not recommended for prosecution, but the CoI found that he had bypassed institutional procedures by irregularly transferring weapons and had committed a serious dereliction of duty by deserting his post on 24 May 2006 (United Nations 2006a: 75).¹⁴³

The failures of PNTL and F-FDTL were inextricably connected. This was recognised in the report of Special Envoy Ian Martin,¹⁴⁴ who had been sent by the UNSG to East Timor from 26 June to July 2006 to report back on the scope of tasks that could be carried out by a mission to follow on from UNOTIL. Martin recommended a comprehensive review, which would include a threat assessment and options for development of the sector that would address the tensions between the PNTL and F-FDTL and options for addressing the relationship between the two institutions (United Nations 2006d).

In June 2006 an Australian Scoping and Advisory Mission assessed the requirements for the reinstatement of civilian policing services in East Timor (International Police in Timor-Leste 2006: 2). A number of people I interviewed told how Australian police commenced work on a reintegration plan for the PNTL that they presented to the East Timorese Council of Ministers, on which they believed they had achieved consensus, only to find that

¹⁴² PNTL involvement included the firing of shots at a demonstration of petitioners at the Palacio Governo on 28 April 2006, and later the same day the UIR fired on petitioners at Comoro market. It also included confrontation between 10 URP officers and F-FDTL at Fatu Ahi on 23 May, an attack on the house of Brigadier-General Taur Matan Ruak on 24 May and later the same day an attack on F-FDTL in Taci Tolu/Tibar, as well as irregular distribution of weapons to civilians and to PNTL officers outside of procedures by both the Minister of Interior and the General-Commander of PNTL (United Nations 2006a).

¹⁴³ Members of the F-FDTL, including Brigadier-General Taur Matan Ruak, Chief of Staff Colonel Lere Anan Timor, Colonel Rate Laek Falur, and Major Mau Buti, and the then Minister for Defence Roque Rodrigues, were recommended for prosecution by the CoI for illegal weapons transfer. Seven other F-FDTL officers were recommended for prosecution for murder, six of them for the murder of unarmed PNTL officers. It was also made clear that the government had no interest in proceeding with prosecutions against senior F-FDTL accused of illegal weapons transfer. Prime Minister José Ramos-Horta immediately defended Brigadier Taur Matan Ruak following the release of the CoI report (da Fonseca 2006). The defence was reiterated by the Secretary of State for Defence Julio Tomas Pinto two years later when defending the actions of those involved (Ramos-Horta suspects to stand trial 2009).

¹⁴⁴ Ian Martin fulfilled the role of SRSG during the UNAMET mission in 1999 and is well liked and respected by East Timorese across the political spectrum.

the consensus had evaporated by the following day.¹⁴⁵ Similar findings were noted by Goldsmith in his study of the Australian Federal Police's Operation Serene:¹⁴⁶

We spent quite a deal of time and negotiated with all the key stakeholders in a reintegration plan, did a presentation to what would be the equivalent of our Cabinet, They all nodded their heads, yes, yes, yes, and the next day there's a totally different plan (respondent quoted in Goldsmith 2009a: 129).

The fact that the presentation was in English without translation no doubt made communication problems worse.¹⁴⁷ When the UN reassumed the role of international police-builders similar relationship and communication issues dogged the process.

At the heart of both the AFP's reintegration plan and the eventual UNMIT plan for reconstruction of the police was a process for vetting PNTL members. There are many complex reasons for carrying out a vetting process. A common reason is a desire for a new beginning after serious conflict, in the hope of developing 'vertical trust' or trust between individuals and regulatory institutions of state. Vetting is most frequently used in security and justice sector institutions where human rights abuses have diminished the legitimacy of state institutions (Duthie 2007: 21). Improved legitimacy of these institutions will only occur, however, if there is a sustained structural and cultural commitment to preventing, and responding to, future abuses (Mayer-Rieckh 2007: 483). If vetting is not done well, it can undermine or unnecessarily complicate other transitional justice processes (De Greiff 2007: 527-528). In this chapter I will argue that reconstruction of the PNTL was carried out in such a way as to lay the foundations of future institutional instability.

6.3 Reconstruction Mechanisms

6.3.1 Mandates and supplemental arrangement

The UNMIT mission was established by Security Council Resolution 1704 on 25 August 2006. UNMIT was mandated to restore and maintain of public security, provide assistance to further develop the PNTL, and support carrying out a security sector review.¹⁴⁸ A Deputy Special Representative of the Secretary-General for Security Sector Support and Rule of Law was appointed with responsibility for the security sector support unit, the

¹⁴⁵ Interviews with bilateral advisers June 2007.

¹⁴⁶ Operation Serene is the Australian Federal Police (AFP) deployment that commenced in East Timor in May 2006 and continues to the present.

¹⁴⁷ Pers. Comm. bilateral adviser May 2009.

¹⁴⁸ The F-FDTL, on the other hand, barely features in the UNMIT mandate. It quickly became clear that no screening of the F-FDTL would be entertained by East Timorese authorities, despite knowledge of the significant role F-FDTL played in the 2006 violence. This violence is detailed in the CoI report.

human rights and transitional justice unit, the administration of justice support unit, the civilian police component, the military component, the UN security section and the administrative support section.

An UNPOL presence, which was essential to fulfilling this mandate was, however, slow to commence. UNPOL did not arrive till November 2006 and were not properly functioning until the following year. It took almost a year to reach eighty per cent of authorised strength (United Nations 2008e: 8). Although the crisis only involved PNTL in Dili and two other districts, UNPOL was deployed to all thirteen districts. It is of note that Ian Martin's assessment team had argued for UN executive policing to be confined to Dili, that the period of international command should be limited and followed quickly by an advisory and mentoring role, believing a heavier international engagement would stymie police development. However the perceived need of UN HQ to redeem their previous failures with a large deployment took precedence (International Crisis Group 2009b: 4).

The nature of such a mission was always going to be a sensitive matter. It would be intimately involved with the police and military as organs mandated to use force in the aftermath of a major crisis of governance. Consequently the UNSG was at pains to stress the pre-eminent nature of East Timor's sovereignty in such an intervention:

An enhanced international role in the security sector and elsewhere must fully respect the national sovereignty of Timor-Leste, and the process of nation-building, which now intensifies, must be Timorese-owned and led (United Nations 2006d: 42).

The greater detail of how the public security and reform, restructuring and rebuilding tasks were to be carried out is contained in a Supplemental Arrangement (SA) which was signed between UNMIT and the East Timorese government on 1 December 2006 (UNMIT and Democratic Republic of Timor-Leste 2006). The SA outlines the phased approach to the conduct and eventual handover of executive policing from UNPOL to PNTL and outlines the co-operative arrangements of UNMIT and the East Timorese government in relation to the rebuilding of PNTL.

The SA provides for executive policing to be carried out by UNPOL until such time as the PNTL are reconstituted through a process of screening, mentoring and certification. The SA also gives the UNPOL Police Commissioner, in consultation with the SRSG and in close collaboration with the East Timorese government, the power to decide when the phased handover of Units and Districts from UNPOL to PNTL can occur, when the PNTL attains benchmarks that would make such a handover possible.

The SA contains considerable ambiguity, and accordingly the implementation of the SA has been even less clear.¹⁴⁹ Some of the ambiguities reside in powers conferred on the Minister of the Interior.¹⁵⁰ He is empowered to establish policy and exercise power and authority regarding the management and administration of the PNTL, and at the same time he is denied any powers in relation to the conduct of operational matters. Similarly, both provisional and final certification of PNTL officers is the responsibility of UNMIT, but “all decisions regarding the appointment, retention and promotion of PNTL personnel shall rest with and be taken by the Minister” (UNMIT and Democratic Republic of Timor-Leste 2006: 10). However this is subject to the requirement that “no promotion of any PNTL personnel [may take] place unless the individual PNTL police officer concerned has first been certified” (UNMIT and Democratic Republic of Timor-Leste 2006: 10).

The SA anticipates a three-stage process commencing with an initial phase where policing is carried out by UNPOL and certified PNTL, a consolidation phase where primary operational responsibility would be handed over to PNTL on a unit-by-unit and district-by-district basis, and a full reconstitution phase where the command and control of all police operations would be handed over to the PNTL.¹⁵¹ This would occur through registration of each existing national police officer; provisional certification for six months (renewable); and final certification upon completion of the training, satisfactory performance of duties and proven respect for human rights. These processes of certification would be interrupted in the event of reasonable grounds to suspect that a PNTL officer has been involved in human rights violations or criminal conduct (UNMIT and Democratic Republic of Timor-Leste 2006: 14-17). Although the SA anticipates reform of the Ministry of the Interior (UNMIT and Democratic Republic of Timor-Leste 2006: 11-12) this has not occurred.

In reality it has not been possible to follow the SA in any great detail because a number of early pre-conditions have never been met. The SA anticipated that benchmarks for the

¹⁴⁹ Ambiguity is also present in the individual Status of Forces Agreements between the respective contributing countries and the government of East Timor. These outline the roles, responsibilities, and legal status of respective forces. Aspects of the Trilateral Agreement are also ambiguous. This agreement is an MOU between the Government of East Timor, the UN and the Government of Australia signed on 26 January 2007 establishing a Trilateral Coordination Forum to coordinate and discuss security issues relevant to the management and stabilisation of the security environment in East Timor.

¹⁵⁰ The government elected in 2007 has consolidated the Ministries of Interior and Defence directly under the Minister of Security and Defence (also Prime Minister) Xanana Gusmão. Two Secretaries of State have been appointed, Secretary of State for Defence Julio Tomas Pinto and Secretary of State for Security Francisco da Costa Guterres.

¹⁵¹ United Nations Security Council Resolution 1867 of 26 February 2009 reiterated the need to fully implement the Supplemental Policing Arrangement. The Resolution also supported “the gradual resumption of policing responsibilities by the PNTL beginning in 2009 through a phased approach, while emphasizing that the PNTL must meet the criteria mutually agreed between the Government of Timor-Leste and UNMIT”.

consolidation phase and the full reconstitution phase would be determined by the Reform, Restructuring and Rebuilding plan, which was supposed to be completed within ninety days of the arrangement's commencement. As the government never approved any versions of the plan there was a long period in 2007-2008 where it was not clear how the consolidation phase would be achieved, and no alternative to determining whether full reconstitution has been achieved has yet been identified.

The legitimacy of the SA was also called into question by members of the AMP government for a variety of reasons, including that it had been signed by the previous government, and concerns regarding its legality were raised.¹⁵² The Provedor had previously raised concerns about the constitutionality of any vetting process, recommending that the process needed to be codified and suggesting that international police forces should provide assistance in this matter (Provedoria dos Direitos Humanos e Justiça 2006).¹⁵³ This recommendation was however disregarded. As discussed below, in late 2008 it was ultimately determined by the Court of Appeal that the SA was in fact not applicable as it had not been ratified by Parliament and published in the *Jornal de Republica*.

There was no sense of any 'local ownership' of the SA, even by an attenuated definition. It took considerable pressure from local advocacy NGO La'o Hamutuk to get the arrangement made public. The lack of ownership was exacerbated by the time taken for the arrangement to be translated into Tetum. A bilateral adviser reported that in 2007 Minister of the Interior, Alcino Barris, "went ballistic" when he realised what it contained.¹⁵⁴

6.3.2 The RRRD Plans

In January 2007 UNPOL completed an assessment of the technical and administrative competencies of the PNTL, including internal accountability mechanisms (United Nations 2008e). This formed the basis for preparing an Organizational Strategic Plan for Reform, Restructuring and Rebuilding the PNTL (hereafter the RRRD plan). UNPOL completed several versions of the RRRD with little or no input from the PNTL.¹⁵⁵ None of the versions was translated into any language that would have made it accessible for East

¹⁵² Interview with UNMIT staff, Dili November 2007

¹⁵³ The Provedor's position on this issue was expressed in response to plans that preceded the Supplemental Arrangement. These were the Recovery Sub-Plan (version 0.5), Reinstatement Plan (version 0.1) and the Concept Paper provided to the Provedor by the Australian Federal Police Commander on 14 July 2006.

¹⁵⁴ Interview with bilateral adviser, Dili 20 June 2007.

¹⁵⁵ In this thesis I have relied on a June 2007 draft, referred to as Version 4 and the January 11 2008 version, which appears to have undergone substantial revision. The expert policing mission refers to "various drafts...yet to be finalized" (United Nations 2008e: 9).

Timorese recipients.¹⁵⁶ None of the versions was ever agreed to by the government. Rather, Minister of Interior, Alcino Barris, in a letter to UNPOL Commissioner Rodolfo Tor dated 24 April 2007, extensively criticised the plan. Minister Barris noted, among other things, that the plan lacked costings, had considerable duplications, inconsistencies and weaknesses and was not oriented to the local context. Perhaps most damningly he alleged extensive plagiarism in the plan. He demonstrated that parts of the plan are taken, without acknowledgement, from sources as diverse as Wikipedia and documents of the Feinberg School of Medicine, Northwestern University in the USA (Minister of Interior 2007).

The quality of the June 2007 version of the RRRD was particularly poor. The plan appears to have been written by committee and includes quite unusual contributions, such as the excerpt below (complete with multiple typographical and grammatical errors) in the section on Human Resources, which is clearly not relevant to the task of police reform:

For instance, during the exodus of Israelis from Egypt in search of the 'Promise Land', Moses was confronted with a problem on hoe to manage the huge number of Israelites with him. His leadership style based on the following proverbial; phrase has been duplicated and applied successfully by any organization this date 'For this things is too heavy for thee, thou art not to perform it thyself alone. I give thee counsel. Thou shall provide out of the people able men and place such over them, to be rulers of thousands and rulers of fifties and rulers of ten. And let them judge people at all seasons, and it shall be that great matter they shall bring unto thee, but every small matter that shall judge so that it shall be easier for thyself and they shall bear the burden with thee (UNMIT 2007a: 123)

An interesting perspective on local ownership is evident in the comments of the former Deputy Special Representative of the Secretary-General (DSRSG), Eric Tan, on the RRRD plan in an interview with ICG in September 2007. He stated that although the UN police wrote the RRR plan, the PNTL "became co-authors" following presentation to the government (International Crisis Group 2008: 7). This corresponds to both Nathan and Arnstein's contention, discussed in chapter 1, that local ownership (or participation) is frequently misconstrued as meaning to gain agreement to a predetermined outcome (Arnstein 1969; Nathan 2007b).

The RRRD was criticised extensively by a UN expert policing mission which noted that the plan did not reflect the SA. The mission also expressed concern regarding "national ownership of the plan, since it had not been prepared with the active participation of local stakeholders" and concluded that "the document cannot be used as a basis for the reform, restructuring and rebuilding of the national police in its current format and will require

¹⁵⁶ Pers. Comm. bilateral adviser May 2009.

substantive changes” (United Nations 2008e:9). It is of note that UNPOL Commissioner Luis Carillho claimed that the RRRD was being used as the basis for the handover of policing responsibilities from UNPOL to PNTL in July 2009. This will be discussed further in section 6.8.

6.3.3 Registration, vetting, certifying

From the outset there was considerable confusion about who was carrying out the registration and screening process of the PNTL. Poor communication between the government and UNMIT was highlighted when it became apparent that serving PNTL members were required to register with both UNPOL and the Ministry of the Interior. For quite some time senior UN officials would not believe their own staff who told them that the government was running their own process, although it was known that the Provedor was receiving lists of registered PNTL for comment from both organisations.¹⁵⁷ From June 2007 the UN was claiming the two processes had been consolidated (UNMIT 2007b). However, different people continued to tell me different things about who owned the process. In June 2007 I was told by the UN RRRD Coordinator that it was a UN process, no longer anything to do with the government, and that the government evaluation panel had been disbanded.¹⁵⁸ I rang the Minister of the Interior’s office, who told me it was news to them that their panel had been disbanded. Attempts to merge the two processes have never been entirely successful.

In interviews conducted in 2007 and 2009, I found that UN officials were frustrated by successive East Timorese government’s lack of interest in carrying out the evaluation process, with delays of six months to a year between meetings of the government-controlled Evaluation Panel.¹⁵⁹ In many ways the PNTL were disengaged from the process. An UNMIT official reported that police he had visited in Baucau were “just waiting for the screening process to blow over”.¹⁶⁰ Another researcher who visited Viqueque police station

¹⁵⁷ Interview with UNMIT HRTJS staff, 12 June 2007.

¹⁵⁸ Interview with RRRD Coordinator, 21 June 2007.

¹⁵⁹ ICG notes that Timorese investigation teams did not work after 2007, with UN police continuing investigations (International Crisis Group 2009b: 7). On coming to power the AMP government (*Aliança para Maioria Parlamentar* – Alliance of the Parliamentary Majority) also expressed frustrations with the process, establishing a Commission for the Evaluation of the PNTL¹⁵⁹ which replaced the one of the same name established by the previous government. In January 2008 the Commission was tasked with developing and presenting to the Secretary of State for Security within fifteen days a detailed report on the development and actual state of the Evaluation Process (República Democrática de Timor-Leste, Secretaria de Estado da Segurança, and Secretariado da Triagem da PNTL 2008), although it appears the report was never produced.

¹⁶⁰ Pers. Comm. UNMIT PAO staff January 2008. Although there was a lack of interest in the process at the senior levels, individual PNTL members wanting information on the status of their certification have found it hard to obtain. A senior PNTL officer responsible for Human Resources reported in July 2009 that he had been asked the same questions over and over by different UNPOL officers in relation to certification

in January 2008 found that none of the police there, including the Commander, knew that they had been screened.¹⁶¹

The limitations on UNMIT's effective power in the screening and certification process also became evident. In 2007 two uncertified PNTL officers were promoted to senior positions by the Minister of the Interior. Jorge Monteiro was promoted to be Deputy Commander of Operations¹⁶² and Inspector Delfim da Silva was promoted to be Deputy Commander of Dili District. UNMIT had recommended Monteiro be dismissed for integrity reasons and da Silva had been cited for a missing firearm. In an internal memo the SRSG, Atul Khare, warned that "the tireless efforts of many who strived hard over the last several months to ensure no PNTL officers with disciplinary or criminal cases against them are allowed back into the force may now have been negated" (Dodd 2007). This continued to be an embarrassment and frustration for the UN when in April 2007 the PNTL Police Academy held its anniversary celebrations when the two deputies mentioned above took a prominent position on the dignitaries' dais.¹⁶³

In interviews conducted in July 2009 respondents were asked to reflect on how the screening could have been done differently or better. Most international actors who have been involved in either the certification process or the handover assessments felt that an intrinsic failure of the screening process stemmed from its hybrid nature and the government's lack of courage or will to dismiss anyone. Some argued that the process should have been either a purely international one, providing East Timorese actors with some distance from difficult decisions, or a purely East Timorese process with only technical assistance provided by international actors. Instead, the hybrid process became subject to subterranean battles over who would 'really' control whether a PNTL member stayed or went – a battle that is not yet over. Many international actors felt that the value of the screening process was limited, although they hoped that the process may yet weed out "the worst of the worst". However, this has not yet happened. One international advisor was critical of the process for falsely promising that the process would deliver a 'squeaky clean' police force – something it could never achieve; he argued that it would have been more useful to focus on issues of reconciliation. PNTL officers were generally not positive

processes. This highlighted the absence of a mechanism for UNPOL who were handling certification cases to provide handover information to arriving UNPOL before leaving the mission. As a result, incoming UNPOL have no information to proceed and need to start again (Wilson and Belo 2009).

¹⁶¹ Pers. Comm. International researcher February 2008.

¹⁶² In December 2009 ICG reported that Jorge Monteiro, who remains uncertified, had recently been appointed as head of the Interpol office in East Timor (International Crisis Group 2009b: 7).

¹⁶³ Interview with bilateral adviser, Dili June 2007.

about the screening process, some also noting that it had not furthered the continued perceived need for reconciliation. The need to balance accountability and reconciliation is a common post-conflict dilemma, never more so than in East Timor. Members of government and PNTL leaned toward a greater emphasis on reconciliation. Most UN staff continued to express the importance of accountability. The Secretary of State for Security, Francisco Guterres, reflected that if he had been in government in 2006 he would have focused on Dili rather than the districts which (with some exceptions) continued to work as normal. He felt that the screening had demoralised the PNTL for two reasons. He argued that the districts had continued to do good work but were penalised as a result of a primarily Dili-based crisis. He also complained that the UN had wanted to “roll everything back to 2002” rather than just consider the events of 2006. This had led to a situation where those who had been punished for previous disciplinary issues were then punished again when those issues were raised in screening.¹⁶⁴

Throughout the process there was pressure on the UN from the East Timorese authorities for the redeployment of PNTL, regardless of whether they had been certified or passed their firearms certification. The UNSG’s report of 28 August 2007 noted that “there is frustration among some national police officers who question the need for UNMIT police, as the national force did not disintegrate in the districts as it did in Dili” (United Nations 2007a: 7). The UNSG’s Report from January 2008 notes that

a number of Timorese leaders, including the Prime Minister, the Secretary of State for Security and the General Commander Designate of the national police, have publicly raised concerns regarding the pace of the certification process and have appealed for increased operational tasks to be given to national police officers as well as accelerated handover of policing responsibilities in the districts. In addition, some concerns have been raised regarding the inadequate number of UNMIT police with appropriate training skill sets (United Nations 2008a: 7).

A final problem to be noted with the certification process is that the processes used and the capacities required of PNTL were highly changeable over time and consequently there is a question mark over the integrity of the certification process. The expert policing mission noted that the process was “relatively unsystematic” and “also lacked a defined certification policy outlining the certification process as well as detailed certification criteria and decision-making modalities”(United Nations 2008e: 11).

¹⁶⁴ Interview with Secretary of State for Security, Francisco Guterres, 9 July 2009.

It would have been much better to wait till the process was complete and then assess everyone for final certification. However, pressure on the UN from the government meant that final certification was brought forward, with attendant doubtful meaning.

6.3.4 Training and Mentoring

The capacity of the UN to carry out the training of police once they had been screened and then to follow on with six months mentoring before final certification were both stretched to the limit. The requirement to carry out executive policing drained capacity to do police-building, particularly during periodic spikes in violence as happened in February 2007 due to rice shortages or in March 2007 when international security forces attempted to apprehend Alfredo Reinado.

Although training was subcontracted to the AFP/AusAID Timor-Leste Police Development Program (TLPDP) delays continued as the TLPDP program was not prepared to go outside Dili to provide training for security reasons. In Dili the Police Academy was still being used as an IDP camp. This meant there was no capacity to provide accommodation to police from outside Dili.

There was initial difficulty in getting PNTL to attend the course and absenteeism was high. Ambivalence about the screening and certification process from Minister of Interior Alcino Barris contributed to the difficulty of getting PNTL members to attend training. Although I did not have the opportunity to assess the training, serious limitations are inevitable in any course that is limited to five days.

The mentoring program also suffered from problems. The development of mentoring guidelines remained a work in progress and the competencies required of PNTL were scaled down from ten to four (one of which was punctuality!).¹⁶⁵ In 2008 mentoring was reduced from six months to eight weeks, guidelines were further relaxed, and PNTL mentored each other when UNPOL could not. This sped up certification but further diminished its integrity (International Crisis Group 2009b: 7). In 2007 the practice of mentoring was described by UN officials and bilateral advisers variously as “not mentoring as we perceive it”, “the weak link in the chain”, “a bit dysfunctional” and “hit and miss”. UN officials interviewed in 2008 and 2009 have subsequently argued that “we are not set up for it” and stated that “we are not going to do it anymore as we’re no good at it”.

¹⁶⁵ Interviews with UNMIT and UNPOL staff, November 2007.

Mentoring also suffered as UNPOL Formed Police Units (FPUs)¹⁶⁶ refused to go on patrol claiming it was not in their mandate.¹⁶⁷

Reports of the UNSG began to be unusually frank about the problems the UN was experiencing with mentoring, noting PNTL resistance to mentoring and supervision and citing low numbers of UNPOL, the high turnover of personnel, the operational rather than capacity-building experience of most UNPOL and the inadequate number of UNPOL with experience in dealing with gender-based violence – a problem that makes up a major portion of crime in East Timor (United Nations 2008a). Although these issues were starting to be acknowledged at headquarters level, in East Timor the UN continued to put a brave face on the matter. The UNPOL Commissioner, Juan Carlos Arévalo, informed me that every PNTL member is mentored every day and a report written on it, a manifestly fabulous claim. When I pushed him on this, saying PNTL in Oecussi were not being mentored, he replied that it might be necessary to change the definition of mentoring!¹⁶⁸

The UNPOL Commander in Oecussi explained to me that in any case it was not really going to be possible to do any substantial mentoring in the subdistricts as the facilities were not of a sufficient standard of habitability for UNPOL, with no availability of water or toilets, and that it was further complicated by bad roads and language barriers.¹⁶⁹ Instead PNTL were essentially being left to run the district themselves while UNPOL remained disengaged from the process. One UNPOL member that I interviewed, who had been in Oecussi for four months, did not know who the PNTL District Commander was.¹⁷⁰ Another UNPOL member informed me (incorrectly) that UNPOL have no powers of arrest and that consequently they just watch the PNTL do it. He also explained that part of his role was to visit the middle and upper schools and explain the dangers of “falling in with the wrong crowd”.¹⁷¹

6.3.5 Resumption

Sustained pressure from the East Timorese government for the handover to commence culminated in a letter from the Secretary of State for Security to the Deputy SRSG dated 16 December 2008 (Secretary of State for Security 2008). The letter outlined a proposal for

¹⁶⁶ The UN is increasingly using Formed Police Units (FPUs) which arrive in mission as a contingent rather than as individual police officers and are more paramilitary in nature (Greener 2008).

¹⁶⁷ Interview with UNMIT staff, Dili November 2007.

¹⁶⁸ Interview with UNPOL Commissioner, Dili 12 November 2007.

¹⁶⁹ Interview with UNPOL Oecussi District Commander 31 October 2007.

¹⁷⁰ Interview with UNPOL member Oecussi 3 November 2007.

¹⁷¹ Interview with UNPOL officer Oecussi 2 November 2007.

advancing a full resumption of responsibility by the PNTL commencing on 27 March 2009. The central elements of the proposal were an entry into the consolidation phase, followed by a comprehensive independent assessment to gauge the administrative, institutional and operational readiness of the PNTL. The independent assessment would then be used to determine whether the PNTL was 'fully reconstituted'. The Secretary of State's proposal for an independent commission was predicated on an acknowledgement that "the United Nations and Timorese authorities have both been deeply involved in the reform process, which means that neither enjoys the necessary remove to look at the readiness of the PNTL in a dispassionate manner".

The Secretary of State's proposal generated significant anxiety within UNMIT. The DSRSG's reply on 5 January 2009 (UNMIT DSRSG 2009) displayed no interest in the proposal as outlined and reiterated their preferred model of joint UNMIT/PNTL assessments, albeit under a rubric of 'joint assessment'. The Secretary of State in his response of 9 February 2009 (Secretary of State for Security 2009) acceded to the DSRSG's counter-proposal while emphasising the need for further discussion regarding the independent commission.¹⁷²

In 2008 joint technical teams (JTT), supported by joint field assessment teams (JFAT), were established to determine in which districts the PNTL would begin to resume full responsibility, with an expectation that all districts would do so by the end of 2009.¹⁷³ All teams comprise equal number of members from UNMIT/UNPOL, Office of the Secretary of State for Security (SoSS) and PNTL. Four assessment criteria are being applied: (a) the ability of the PNTL to respond appropriately to the security environment in a given district; (b) final certification of at least 80 per cent of eligible PNTL officers in a given district/unit to be handed over; (c) the availability of initial operational logistical requirements; and d) institutional stability (United Nations 2009a: 6-7). The process suffered from a number of weaknesses as the assessment tool did not comprehensively assess the required criteria, JFAT members were unclear of expectations placed upon them

¹⁷² The handover and associated monitoring arrangements were subsequently agreed on 13 May 2009 in an exchange of letters and attached Annex between the Prime Minister and the SRSG. Associated monitoring arrangements were described in a joint memo (dated 28 April 2009) from the UNPOL Police Commissioner and PNTL Commander General outlining the responsibilities of UNPOL in the consolidation phase. A Joint Directive from the Secretary of State for Security and the UNPOL Police Commissioner (dated 14 May 2009) agreed to the Resumption of the Primary Responsibility for the Conduct of Police Operations by the Polícia Nacional de Timor-Leste within the District of Lautem.

¹⁷³ However, as at the end of November 2009 only three districts and the Police Academy have been handed over.

and were not given adequate training,¹⁷⁴ there were clear scoring anomalies (Murray 2009) and there was an overemphasis on assessing district headquarters rather than the subdistricts.

On 14 May 2009 the process of ‘handing over’ policing responsibility from UNPOL to PNTL in East Timor commenced with the eastern-most district of Lautem.¹⁷⁵ This is formally referred to as the ‘resumption’ of PNTL responsibility. This handover occurred a little more than six years since Lautem was handed over to PNTL after the first attempt by the UN to build a police force for East Timor. The 2009 Lautem handover was followed by handovers in the districts of Manatuto and Oecussi and a handover of the Police Academy, in what is anticipated to be a district-by-district and unit-by-unit handover. Meanwhile overall executive policing is maintained by UNPOL.¹⁷⁶ The handover represents a penultimate ‘consolidation’ phase, to be followed (at a yet to be determined time) by the resumption by PNTL of full executive policing responsibility. This is referred to as the ‘full reconstitution’ phase.

6.4 The UNMIT Security Sector Review

In addition to the reform, restructuring and rebuilding of the PNTL, UNMIT was also mandated to provide assistance to the East Timorese government to carry out a Security Sector Review. A Security Sector Support Unit (SSSU) was established with responsibility for the review. UNMIT’s difficulty in recruiting and deploying sufficient numbers and calibre of UNPOL also affected civilian deployments. It took two years for the SSSU to fill their identified positions. This made the work of setting a direction for the unit and establishing critical relationships with government interlocutors very difficult.

When I met with SSSU staff more than a year after commencement of the mission, in November 2007, it was clear that the staff felt excluded from any real processes to do with the security sector. Staff were approaching the review with some trepidation and sense of

¹⁷⁴ Interviews with JFAT members July 2009

¹⁷⁵ On 4 February 2008, under pressure from the East Timorese government, three police posts in Dili had a ‘transfer of authority’ to the PNTL (Bairro Pite, Bidau and Mercado Lama). It appears there was no process for this handover, and this early handover does not feature in the United Nations or East Timorese Government narrative regarding the contemporary handover. The UN expert policing mission visited these police posts in 2008 and found that “those posts were inadequately prepared for the transition, including in respect of basic logistical support, raising many questions about possible future larger-scale handovers” (United Nations 2008e: 7).

¹⁷⁶ In December 2009 ICG noted that initially it had been hoped to hand over one district or unit every five weeks but following the handover of the Police Academy no handovers occurred in the following three months (International Crisis Group 2009b: 13).

pointlessness, as they felt that the government was acting independently, pre-empting the review and not informing them of what was being done.

SSSU advisers responded by refocusing their role on sourcing advisers to be placed within the F-FDTL and Ministries of Interior and Defence, something that had been previously requested by José Ramos-Horta.¹⁷⁷ However, this represented a serious ‘sequencing’ problem – sourcing advisers when there was no clear process or policy framework to establish what they should be advising upon or what skills they should have. Common to many advisers in East Timor, those I spoke to had not ventured far outside the capital, Dili. After I had travelled to Oecussi it became apparent that much of what I had been told about the situation in the districts by the staff of the SSSU did not reflect the realities on the ground.¹⁷⁸ This underlined a further problem, that management of the security sector review and police reform was not connected within the UNMIT structure.

Given that the SSSU staff seemed to be so lacking in confidence about their role, it was interesting that they described themselves as being involved in a process of ‘confidence building’ for the government, which included the convening of educational seminars. In 2007 three of these seminars were convened on the topic of SSR. During these seminars East Timorese leaders expressed scepticism about the UN’s capacity to assist with reform, given its track record on building security institutions to date (International Crisis Group 2008: 11).¹⁷⁹ Meanwhile the UN reported back positively on the outcomes of the seminars (United Nations 2007a: 9).

It was not until June 2008, almost two years after the beginning of the UNMIT mission, that the Prime Minister signed a project document worth USD 1 223 226 in support of a review of the security sector.¹⁸⁰ Until this stage the project document had been through at least three iterations. The Security Sector Review Project is a joint UNMIT/UNDP project which includes the following activities: a) a functional analysis of governance institutions and state and non-state security institutions, b) a gap analysis of institutional and regulatory

¹⁷⁷ Pers. comm. UNMIT staff April 2008.

¹⁷⁸ As an example the Dili-based SSSU policing advisor told me that under no circumstances were uncertified PNTL allowed to ‘work’ (Interview with SSSU policing advisor 28 October 2007), yet when I got to Oecussi I was informed by the UNPOL District Commander that the PNTL do all the work and UNPOL just monitor (Interview with UNPOL Oecussi District Commander 31 October 2007).

¹⁷⁹ The ICG also recounts how a high-level East Timorese official, in a subsequent interview, was “explicit in his distaste” about the utility of the UN in relation to the security sector review. In an interview with ICG, Roque Rodrigues, Presidential Adviser on SSR, was critical of UNMIT, claiming it was displaying arrogance in the way that it was allocating its security sector advisors to East Timorese bodies (International Crisis Group 2008: 11).

¹⁸⁰ At the time of the signing of the document \$223 226 of the budget was unfunded.

gaps relevant to the security sector, c) a threat analysis and d) a strategic environment review. As of November 2009, almost a year and a half later, none of these activities has occurred. In fact in interviews in July 2009 both the head of the SSSU and the UNDP Project Manager for the review agreed that the review, as such, would not happen.¹⁸¹ Given the difficulties staff of the SSSU had in establishing relationships with the East Timorese government, it is possible that even if the process had proceeded it might have had no correspondence to the likely considerable and significant decision-making by structures of power and networks not visible to international actors.

Following the release of the UNSG's report on UNMIT in February 2009 (United Nations 2009a), Della-Giacoma argued that

even after setting this modest task, two and a half years later we are still waiting for substantive progress on the review. Last week, in two brief paragraphs, the Secretary-General reported the mission's 'security sector review project' had resulted in the formation of a project board that had met three times to approve a 'training-of-trainers course' for unarmed civil security, funded a seminar, planned future seminars, had given in-principle approval for a public opinion survey on security issues, conducted some radio maintenance, and was planning to hire a few 'experts' for the MoD[Ministry of Defence] and parliament.

These projects hardly constitute a comprehensive review and are more like the bread and butter of a UNDP country team than a core function of a Security Council-mandated peace operation (Della-Giacoma 2009).

The failures of the review process are also captured in the Minutes of the 'Partners' Meeting on the Seminars on the Reform and Development of the Security Sector' held on 11 February 2009. Large numbers of senior level participants attended, yet both the topic and conduct of the meeting were strangely anemic.¹⁸² The agenda included only two items, the publication of the previous SSR seminar proceedings and the topic for the next seminar. Discussion entailed minutiae about how many copies of the previous proceedings should be published and the novel idea that they should be published in three languages (English, Tetum and Portuguese). A decision was taken that the publication plan should be approved at the following month's meeting. A seminar on National Security Policy was proposed, with the suggestion that participants take this back to their organisations for

¹⁸¹ Interview with Chief, SSSU, UNMIT 6 July 2009, interview with UNDP Project Manager 7 July 2009.

¹⁸² Thirteen people were present, including the Advisor to the Prime Minister on Security Matters, a representative from Parliamentary Committee B on Defence and Security, the Chief of Staff of the Secretary of State of Defence, an Advisor to the Secretary of State for Security, two representatives from the SSSU and five representatives from the Coordinating Committee for the Reform and Development of the Security Sector (CCRDS) – two of these representatives were the former Minister of Interior and the former Minister of Defence.

discussion. It was also suggested that having an interpreter there would facilitate the next meeting; a date for the meeting was to be set 'later'. One of the members of the CCRDSS commented, apparently randomly, that SSR "should be based on the past, the present and the future". It is disturbing that such an apparently high level meeting (yet without an interpreter) was convened to discuss things so trivial, and yet apparently without the authority to make any decisions. It raises the question of where the real decisions regarding the security sector are made and who the decision-makers are.

One of the difficulties facing the SSSU in relation to the review was that it had always been clear that the review itself was the responsibility of the East Timorese government and that the role of the UN mission was to 'assist'. As long as the government was unwilling to commit to the process of a review and to involve the UN, the 'assistance' framework was always going to encounter obstacles. The crisis further sensitized the political elite to security issues, and they became very reluctant to engage in the review. However, several factors made the government want to seem to be committed to security reform, despite evidence to the contrary. One of these factors was the severity of the crisis, which included the unravelling of the security forces and security in general and led to the necessity to invite international forces to restore order and to ask the UN to re-establish a mission. That the government of East Timor needed help and needed it quickly in May 2006 is something upon which all parties would probably agree.

Whether they were quite as enthusiastic about a SSR process that was unfamiliar and implied a further loss of control is more doubtful. However, the government was in no position to reject the package of measures that was being offered. The agreement, however, has proved to be particularly unstable, arguably superficial, and the gap between design and implementation is substantial.

On the international side UNMIT generally, and the SSSU more specifically, were unsure how to proceed, how to establish the difficult relationship with a sovereign government that was going to be fundamental for the review to commence, and did not have enough people with the right skills to actually carry out the work (Della-Giacoma 2009). In addition, the SSSU had no money in its 2007-2008 budget to support the review.¹⁸³ Further reasons for difficulties in getting the Security Sector Review to 'take hold' in East Timor have been highlighted by Peake:

¹⁸³ Pers. Comm. Bilateral adviser May 2009

the phrase 'SSR' has little traction within Timor-Leste. Profound uncertainty remains as to what the phrase actually means. The phrase may be intimately familiar to headquarters-based policymakers, but it is still somewhat alien to those on the ground actually engaging in reform (Peake 2008b: 2).

Previous UN failures in Timor in the area of security development has similarly made UNMIT feel a need to seem to be getting on with the job of carrying out/supporting a security sector review in the same way that the East Timorese government feels compelled to appear to be doing so. It is clear that a review that is any more than a 'ritual' document will not happen; something admitted by both UNDP and SSSU staff. A range of parallel security sector reform structures established by the East Timorese government have also produced little.

6.5 Political context

Successive East Timorese governments have had no experience in constructing state-based security systems or in carrying out processes of formal institutional change and accompanying policy and legislative development. In addition they are suspicious of the motives and capacities of internationals charged with assisting with police-building and security sector reform, and are nervous about the incursions into sovereignty that international assistance represents. The East Timorese political leadership across the political spectrum has been reluctant to work with the UN. However, there is also a bigger pattern of resistance to any kind of oversight mechanisms or scrutiny of security sector developments and legislation. As the ICG has noted:

Most security sector legislation since independence has been passed by decree, by-passing Parliament and consequently missing out on an important source of scrutiny, transparency and legitimacy (International Crisis Group 2008:9).

Successive government's have also been reluctant to engage members of civil society on discussions on the security forces, including what is really wanted or required in a police force. To judge from accounts of meetings of the Presidential Security Sector Working Group, some members of that group fear that attempts to involve civilians in achieving a consensus about the roles of the security forces might re-open previous conflicts between and within the forces and society more broadly.

In addition, during the time period covered by this chapter, many important, but distracting, events occurred, including Presidential and Parliamentary elections that resulted in a (disputed) change of government. There was also a poorly-managed pursuit of Alfredo Reinado, which involved extraordinary numbers of people acting within and beyond their

formal mandate – sometimes simultaneously and at odds with each other. Enormous efforts were required to solve the problem of the petitioners and to begin to solve the problem of the IDPs. From February 2008 the government had to manage the attacks on the President and Prime Minister and the subsequent hunting down of those responsible. Substantial focus on SSR appears to have been difficult. However, even when headway had been made on these issues, enthusiasm for police-building and SSR under international auspices had, if anything, waned even further.

Political leaders have made conflicting statements about the trustworthiness and competence of the PNTL. There have been many statements demonstrating a lack of faith in the PNTL.¹⁸⁴ However, undermining of the police force is complicated by a sovereignty discourse best understood as “they [the PNTL] might be incompetent bastards but they are our incompetent bastards”. Because of disquiet with the slow pace of UN process on reforming the police, concern that hard won sovereignty might slip away, and the need to normalise an unstable situation there was no shortage of statements about the importance of getting the Timorese police back on the streets as quickly as possible even if they had not been registered, screened or certified (United Nations 2008e: 7; International Crisis Group 2009b: 22).

Tension has existed from the beginning of the process between successive East Timorese governments’ purported support of a police reconstruction process and a desire to demonstrate sovereignty and independence on such a flagship issue. Consequently, reconstruction of the PNTL has not run smoothly, with both technical and political challenges evident. It is now clear that the East Timorese government has tired of the international security presence. Many leaders in East Timor, as a result, have criticised the presence of international military and police. These criticisms have come from the Prime Minister, the Secretary of State for Security, the Secretary of State for Defence, the Chief of Staff of the F-FDTL, and the current and former PNTL Commander General.¹⁸⁵ These sentiments are also echoed by opposition parties. Secretary of State for Defence Julio Pinto recently stated that “what we do know is that if we compare the character, self-confidence and performance of some PNTL members with some UNPOL members, ours are much better” (Pinto 2009). Brigadier-General Taur Matan Ruak made his position clear in a newspaper interview when he stated that “foreign forces should have left Timor-Leste by now” (As forças estrangeiras “já deviam ter saído” de Timor Leste 2009).

¹⁸⁴ See e.g. Timor Post 4, 5, 7, and 8 June 2007, and Suara Timor Lorosa’e 7 and 8 June 2007.

¹⁸⁵ Paradoxically these statements often alternate with media comments from the same people about hoping that UNPOL will stay till 2012.

Both UN Headquarters and the East Timorese government have expressed concerns about the reform process, including the methods and the integrity of the reconstruction process. This led to two important visits from New York-based UN officials to assess the realities on the ground. A Security Council mission visited East Timor from 24 to 30 November 2007 and expressed disquiet about the effectiveness of UNPOL. Subsequently the expert police mission noted in relation to PNTL that “tremendous institutional gaps persist, including weak management and command and control, lack of core capacities (e.g., investigations), and an almost total absence of logistics and systems maintenance capacity” (United Nations 2008e: 2). Although many problems with the international police reconstruction process were identified by both UN headquarters and the East Timorese government it appeared to occasion little change to the trajectory that the poorly conceived and executed project was taking.

6.6 Regulatory ritualism

In preceding sections I have argued that issues of relationship and capacity and contests over sovereignty have affected the processes of police reconstruction and SSR. In this section I argue that the paralysis that has gripped the process can be understood in terms of regulatory ritualism. This ritualism serves to obscure a vast gulf between the parties. The UN has a stated commitment to importing a Weberian model of state security, although it has a manifest incapacity to carry out such a venture even if the East Timorese leadership were willing partners. The East Timorese leadership is committed to the personalised exercise of power and is suspicious of models of impartial security forces. This impasse leads to both sides pretending to carry out police and broader security sector reform.

The phenomenon of pretending to do something rather than actually doing it has been discussed by Braithwaite, Makkai and Braithwaite (2007) in relation to nursing home regulation. The authors provide extensive examples from the aged care environment such as when emphasis is placed on the setting up of residents committees rather than making sure that the committees do anything. The authors refer to this process as regulatory ritualism.

In developing their analysis of regulatory ritualism the authors use Merton’s typology of individual adaptation to a normative order – conformity, innovation, ritualism, retreatism and rebellion (Merton 1968). Rather than carrying out a process of security sector review/reform and police reconstruction, both the East Timorese government and the UN have been engaged in a mutually reinforcing process of regulatory ritualism. It is not only in East Timor that post-conflict governments say what they think donors want to hear. They

do this in order to be accorded the status of ‘functioning’ rather than ‘failed’ state, which in turn ensures continued diplomatic and financial support. Hills has noted in relation to Rwanda that

the regime consistently used the language donors wanted to hear ...and provid[ed] training courses on subjects such as stress management, trauma counselling and gender-based violence, while tolerating extrajudicial killings by government soldiers, the deaths of thousands of unarmed civilians (Hills 2009a: 145).

Evidence of this form of regulatory ritualism in relation to police reconstruction and SSR in East Timor is found in an increasing failure to distinguish the role of the police and the military, in the decision to begin the hand-back of executive policing responsibility from the UN to an unreconstituted PNTL in March 2009, and in the failure to produce a review of the security sector for over three years – despite the allocation of at least USD 1 223 226 to support the process (República Democrática de Timor-Leste, UNMIT, and UNDP 2008):¹⁸⁶ The partners meeting detailed in section 6.4 leaves the distinct impression that a ritual committee is having a ritual meeting.

The alternating use of ritualism and rebellion by the East Timorese government, and ritualism and retreatism by the UN, has served to obscure the ambivalence of all parties for a security reform agenda in East Timor. The East Timorese government has gone through the ritualism of publicly expressing support for the SSR process, setting up various security related bodies such as the ‘three tiered mechanism’, participating in seminars and signing the UNDP project document. It has also participated, albeit tepidly, in the evaluation of PNTL as part of the RRR process. The ritualism of the UN follows the same path.

Where the organisations diverge is in the ‘rebellion’ or hostility towards the UN presence and role that is intermittently displayed by figures such as the Prime Minister, the Secretary of State for Security, the Secretary of State for Defence, and the former and current Commander-General of the PNTL. This hostility will sometimes manifest in decisions taken, and decisions thwarted by, the East Timorese government. This is described in this chapter in relation to the screening process for the PNTL and is further detailed in chapter 7 in the decisions surrounding the Joint Command and states of exception. It also manifests in the steady stream of negative statements about foreign forces, including UNPOL and the ISF.

¹⁸⁶ This figure should, however, be viewed in the context of the larger expenditure on UNMIT, with one of its central mandated activities being the security sector review.

For the UN, in addition to the ritualism of appearing to be carrying out a support role to the security sector review and police reconstruction, it can be argued they are also engaging in retreatism. The UN's invocation of local ownership allows them to avoid responsibility for failing to advance outcomes, and behave passively when the East Timorese government behaves in ways contrary to the mandates of the mission and the ideals of the UN. This retreatism manifests when the UN fails to insist on seeing through the disciplinary and legal processes that should be visited on errant PNTL – theoretically under their control, or when they defer to local ownership in expressing approval for the establishment and conduct of the Joint Command, although its establishment contravened the terms of the SA. More recently it was evident in the failure of the UNMIT mission to speak out on the release by East Timorese authorities of indicted war criminal, Martenus Bere, in August 2009. His extra-judicial release violated international law and undermines the rule of law and the Constitution of East Timor, all things that should be at the forefront of UNMIT's agenda (La'o Hamutuk 2009).

Barnett and Zurcher (2009) propose the idea of a 'peacebuilder's contract' which is like Braithwaite, Makkai and Braithwaite's regulatory ritualism framework. The model they propose uses gaming theory to explain how peacebuilders, state elites and rural or subnational elites form a 'contract' with a number of possible outcomes – peacebuilding that may be cooperative, compromised, captured, or confrontational. The model is based on the authors' experiences in Afghanistan and Tajikistan. Although it has some limits to its general applicability, in particular in relation to the role of subnational elites, its explanation of why 'compromised peacebuilding' is the most likely outcome is compelling and resonant with the regulatory ritualism analysis above:

Peacekeepers agree to provide international resources and legitimacy for state elites in return for stability and acknowledgement by state elites of the legitimacy of peacebuilding reforms. Consequently, this contract reinforces the status quo even as it leaves open the possibility for reform. In other words, the reforms that do take place will unfold in a way that protects the interests of local elites. This outcome can also be seen as symbolic peacebuilding. In this way it resembles what sociological institutionalists call "ceremonial conformity". The actor, or organization, wants to maintain the stream of material and normative benefits required for its legitimacy and survival, but fears that full compliance will be too costly (Meyer and Rowan 1977:50). Consequently it adopts the myths and ceremonies of the organizational form, but maintains its existing practices (and in this way organizational form and practices become decoupled). It is symbolic or ceremonial peacebuilding in that the symbols of reform have been transferred and thus there is the surface appearance that there has been a transformation of the kind of state, that is, toward a liberal democracy, even

though the existing power relations have largely emerged unscathed (Barnett and Zürcher 2009: 35)

In the next section I focus on the early stages of the 2009 UNPOL to PNTL handover. I argue that the enactment of regulatory ritualism, by both the UN and the East Timorese government, in relation to the socially valued goal of security, has ensured that the police handover is, at many levels, a fiction. UNTAET's initial development of the PNTL was hailed as a success; supported by considerable media coverage of newly-minted, smartly uniformed, East Timorese police undergoing rituals of comfort such as training, and on parade. This provided considerable legitimacy to the international effort. These illusions were shattered by the events of 2006. Once the fires of the crisis were extinguished, a new round of police-building commenced under UNMIT's direction but it was equally lacking in substance. This time efforts became concentrated on creating an appearance, in fact a smoke-screen, that the rituals of comfort were actually delivering results. In other words, what was required was an apt set of fictions that connected rituals of security sector presence, like parades, to the substance of security. To take the first fiction below, for a handover from UNPOL to PNTL to be a ritual of comfort for a fearful citizenry or anxious UN personnel, it is best grounded in either a reality or a believable fiction that UNPOL has an executive policing authority to hand over. The smoke in the title of this thesis takes the form of a set of believable fictions. These fictions enable institutionalised means for reforming the security sector to generate the appearance that they connect to the substance of security. They legitimate ritualism.

6.7 The handover: what exactly is being handed over?

On the face of it, East Timor in late 2009 is relatively calm and the handover is progressing without notable incident. Three districts and the police academy have been 'handed back'. Below I articulate the many layers of fiction involved in the handover to demonstrate that although UNMIT and the East Timorese government have different interests, these interests are congruent and are manifest in both sides 'playing along' with the handover.

The first fiction is that UNPOL have an executive policing mandate, articulated in the Supplemental Arrangement, by which they are 'legally' able to hand over the PNTL.

The executive policing mandate of UNPOL is repeated in many of the documents pertaining to the handover. On 9 December 2008, however, a little publicised Court of Appeal decision¹⁸⁷ in East Timor threw into grave doubt this assumption of executive

¹⁸⁷ The Court of Appeal in East Timor is currently the highest court in the country. Although there is provision for a Supreme Court and a Constitutional Court, these roles are currently filled by the Court of Appeal. Case no. 95/CO/2008/TR

policing. A decision against defendant Adérito da Costa Ximenes Neto, Interim PNTL Commander Baucau, in the District Court was overturned on appeal. Neto had been suspended on the order of UNPOL Commissioner Juan Carlos Arévalo on 27 August 2008, following completion of a disciplinary process which found that Neto had carried out practices that violated human rights. As Neto continued to work while under suspension, he was arrested and subsequently convicted, on 14 October 2008, of committing a false identity crime punishable pursuant to article 228 of the Indonesian Penal Code.¹⁸⁸ He was sentenced to six months imprisonment, suspended for a period of twelve months.

The Court of Appeal decision, however, found that as the SA was not ratified by Parliament and promulgated by subsequent publication in the Official gazette, *Jornal da República*, as required by the East Timorese Constitution, it did not have the force of law. It also found that the UNPOL Commissioner did not have the legal power to carry out that suspension. The implication of the decision is that the SA has no legal standing under East Timorese law, and thus all powers flowing from it have no legal basis either. If the UNPOL Commissioner does not have the power to suspend he also does not have the power to carry out any other executive policing tasks.¹⁸⁹

Curiously, it appears to have suited both the East Timorese government and the UN to ignore the decision and disregard the legal limbo that it created. How this squares with the UNMIT mandate to promote the rule of law, or with Article 1(1) and 6(d) of the East Timorese Constitution that determines that East Timor is a rule of law state, is unclear.

The second fiction is that UNPOL have, or have had, an effective 'practical' command and control of the PNTL.

This would be a pre-requisite for being able to give command and control to someone else. However, on a day-to-day basis UNPOL exerts little effective control. The PNTL operate fairly autonomously, particularly within the 'special units' such as the UIR, URP and UPF, where there is no collocation of UNPOL.¹⁹⁰

¹⁸⁸ Article 228 of the Indonesian Penal Code states that "Any person who with deliberate intent wears distinguishing marks or performs an act belonging to an office he does not hold or from which he has been suspended, shall be punished by a maximum imprisonment of two years or a maximum fine of three hundred rupiah". The Indonesian Penal Code has subsequently been replaced by the East Timorese Penal Code.

¹⁸⁹ A more comprehensive account of the circumstances surrounding the Neto episode can be found at Wilson (2009).

¹⁹⁰ Under Decree Law 9/2009 Organic Law of Timor-Leste's National Police (PNTL) the URP has been transformed to become the Special Police Unit and the UIR has been transformed to be the Public Order Battalion. Although this law was promulgated in February 2009, the original special units were still in evidence in July 2009.

The UIR, URP and UPF were all significantly involved in different ways in the unravelling of the security forces and associated violence in 2006.¹⁹¹ However, rather than prioritising reforming these units, they have received a ‘hands off’ treatment from UNMIT, with no UNPOL co-located with any of them. The reasons for this decision are unclear but may be illuminated by the comment of an UNPOL officer in Oecussi in 2007 who informed me there were no UNPOL co-located with the UPF because “they are like soldiers”.¹⁹²

UNPOL’s lack of effective command and control is also evidenced in the many critical decisions that have been taken by PNTL since 2006 without the agreement, or sometimes even the knowledge, of UNPOL. This includes the development of the Dili Task Force in 2007. More critically it includes the creation of the Joint military police Command in February 2008, placing PNTL under the command of F-FDTL at a time when they were ostensibly under the control of UNPOL. The joint command will be discussed in chapter 7.

UNPOL’s organisation has exacerbated this lack of effective command and control, as has the PNTL’s reluctance to submit to UNPOL control. Shortcomings of UNPOL in East Timor in their first attempt to build the PNTL were detailed in chapter 3. More recently the UN expert police mission that visited East Timor in early 2008 expressed extensive and serious concerns, including the “lack of qualified UNMIT police personnel at all levels”, noting that their “operational effectiveness was impeded by... an often partial understanding of the applicable law and human rights standards” (United Nations 2008e: 8,10).¹⁹³ Given that the shortcomings of UNPOL’s performance were identified eighteen months before I conducted my July 2009 interviews, the question should be asked why so little has been done to rectify the situation. Despite changes that have occurred in the (still under-resourced) UN Police Division at DPKO HQ,¹⁹⁴ little of this is apprehended at mission level and even less beyond the edges of Dili.

Some other shortcomings bear repeating. UNPOL continues to have difficulty recruiting officers of adequate calibre, in sufficient numbers and in a timely fashion. The ‘national

¹⁹¹ The CoI recommended both named and unnamed UIR and URP officers for prosecution and further investigation. The CoI also notes that members of the UIR and URP deserted with Alfredo Reinado, members of the URP were involved in supporting east-west confrontations and subsequent attacks in Fatu Ahi, members of the UIR were involved in the attack at the Comoro market and that significant irregular distributions of UIR weapons occurred.

¹⁹² Interview with UNPOL officer Oecussi 2 November 2007.

¹⁹³ For a more expansive account of the shortcomings of UNPOL in East Timor, as detailed by the expert policing mission, see Section II Key concerns and issues, and Section III Observations and recommendations (United Nations 2008e).

¹⁹⁴ For details of recent changes within the UN Police Division see Greener (2009).

balance' model of deploying forty or more different nationalities of police to supervise an already weak and poorly structured police institution does not work. It is a mistake to believe that 'cops on the beat' alone have the capacities to establish a public service organisation.¹⁹⁵ An examination of the changing profile of police-deploying countries over time indicates that an increasing number of police are being deployed from countries with poor human rights records.

During interviews in July 2009, conducted in Dili, Baucau, Lautem and Liquica, many UNPOL members expressed frustration with the quality and capacity of their fellow UNPOL. They repeatedly questioned why the UN continues to deploy those who are not actually police,¹⁹⁶ those who are from 'failed states' and those who have not passed mission requirements related to driving and (English) language. UNPOL members made unsolicited complaints about other UNPOL members, accusing them of extreme lack of interest and laziness. PNTL members interviewed similarly felt that there were many UNPOL of poor calibre, emphasising that many had little interest in East Timorese culture or language. Once deployed, the ability of UNPOL to supervise PNTL has been undermined by factors including: a failure to co-locate UNPOL and PNTL, resulting in parallel commands, the variable – and sometimes high – turnover of UNPOL,¹⁹⁷ language and other communication difficulties, and failure to deploy UNPOL to most subdistricts due to harsh living conditions. In the district of Manufahi, UNPOL and PNTL were located in separate stations at different sides of town.¹⁹⁸ Even in stations in which they were co-located, there was little mixing.

It was clear from interviews I conducted in both 2007 and 2009 that many UNPOL were unaware of what was happening in their districts¹⁹⁹. This eroded UNPOL legitimacy and

¹⁹⁵ In an interview on 9 November 2007 with Edward Rees made the astute observation that no-one would consider putting over a thousand doctors on planes to East Timor to establish the health service; they would send project managers and administrators with experience in running a health service and a much smaller number of doctors and nurses. Yet for some inexplicable reason the UN continues to send large numbers of UNPOL to establish a police institution.

¹⁹⁶ As noted in chapter 3 both the UNTAET and UNMIT mission deployed UNPOL who were not actually police. This was highlighted again in interviews in July 2009 with various UNPOL officers who complained that the practice continued. One UNPOL made specific mention of a fellow UNPOL who had been a police officer for a short period twenty years ago.

¹⁹⁷ UNPOL are typically deployed for six to twelve month periods, though sometimes this may be extended. However, many UNPOL officers who sought to have their contracts extended were unable to get the wheels of the UN bureaucracy to turn in time before they were sent home.

¹⁹⁸ Pers. Comm. JFAT member August 2009.

¹⁹⁹ A number of UNPOL also gave fanciful accounts of local history including accounts of José Ramos-Horta hiding in the east of the country during the resistance (when in reality he left the country in 1975) and accounts of the problems of FRETILIN trying to impose 'communism' after the restoration of independence in 2002.

made establishing command and control very difficult. Two illustrative cases from July 2009 interviews follow. The first occurred on Atauro Island, a subdistrict of Dili. A group of musicians, who had played in several previous years' restoration of independence (20 May) celebrations, decided that on this occasion they wanted to be paid. The subdistrict administrator said he would kill the musicians if they refused to play. He then asked UNPOL to go and pick them up in the UNPOL vehicle and bring them to the venue. The UNPOL officer obliged, as he was unaware of the background to the story, only becoming aware of it when informed later by other visiting UNMIT personnel.²⁰⁰ With no common language and no language assistant on the island the possibility of UNPOL and PNTL counterparts being able to communicate, let alone UNPOL assume a command and control role, is difficult to imagine.

The second case occurred in Maubisse, a subdistrict of Ainaro. A mentally disabled man had been caught throwing stones. After PNTL detained him for the seventy-two hours allowed by law he was released but was kept handcuffed as he was considered dangerous. It was not until many (reports vary) days later that UNPOL members in Maubisse realised what had happened and freed the man.²⁰¹ It is clear from these examples that although language assistants have been deployed, there are not enough of them, and this is hampering communication between international and national police, a point also made by the UN expert policing mission.

The third fiction is that the screening and certification process would ensure that PNTL members guilty of carrying out crimes and abuses of human rights, in particular during the crisis of 2006, would be removed from the force.

In November 2009 the process of evaluating PNTL staff for certification is still not completed and has experienced extraordinary delays, with the government-controlled evaluation panel often not meeting for long periods of time.²⁰² Three years after the commencement of the UNMIT mandate there is no agreement between UNMIT and the East Timorese government on a mechanism for removing PNTL who are found to be unsuitable. To the frustration of the UN, a number of officers recommended by the UN for suspension or dismissal continue to work as PNTL members. Others are on the PNTL payroll but do not report for duty. In July 2009 in three districts there were PNTL Police

²⁰⁰ Interview with UNMIT HRTJS staff 5 July 2009.

²⁰¹ Interview with UNMIT HRTJS staff 5 July 2009, interview with Deputy UNPOL Commander Lautem 14 July 2009.

²⁰² In October 2009 the Report of the Secretary-General noted 259 officers still facing pending criminal and/or disciplinary proceedings, with sixty four of these still requiring adjudication by the Timorese led evaluation panel (United Nations 2009b: 6).

Commanders who were not yet fully certified. No one has been removed from the PNTL as part of the screening process.²⁰³

A case of note relates to the PNTL Manufahi District Commander who was recommended for suspension by the evaluation panel. The Minister of Defence and Security ignored the recommendation and decided instead that he should not be certified. This is of course not the same as suspension as he is still active within the PNTL, having recently been transferred to the Office of Operations. It is clear that the East Timorese government has never had the political will to carry out a process which would dismiss members of the PNTL. This has resulted in a general lack of interest in the process and 'go slows' on the part of successive Ministers. Although it was always unlikely that such a political process would produce a 'squeaky clean' institution, the results are a great disappointment, having failed to remove even "the worst of the worst".

Despite F-FDTL's extensive involvement in the violence of 2006, screening F-FDTL members in the same way proposed for the PNTL was never seriously contemplated either by the UN or by the East Timorese government. When the issue was raised, "national media reported that Prime-Minister Ramos-Horta would reject any possible recommendations by UNMIT to conduct evaluation of F-FDTL soldiers in the same manner as the PNTL screening. PM Ramos-Horta was further quoted as saying that the F-FDTL was highly disciplined and that an evaluation had already been conducted before the crisis of 2006" (UNMIT 2007d).

The fourth fiction: UNMIT had the capacity to 'reconstruct' the PNTL.

The failure to deploy sufficient UNPOL with the right skills for the task of reconstruction was evident in 2007 and continued to be a problem through 2008 and 2009. This was exacerbated by a lack of interest on the part of the government and the PNTL in PNTL reconstruction according to an unclear UNPOL formula.

Training and mentoring both suffered from serious problems, and there is every indication that it ultimately amounted to a 'box ticking' exercise. In 2008 the East Timorese government, exasperated by the unclear international approach, arranged for all future basic recruit training for the PNTL to be carried out by the Portuguese GNR (International Crisis Group 2009b: 9).

²⁰³ Former Dili District Deputy Commander, Abilio Mesquita, was dismissed, but this occurred outside the screening process as he did not register. Similarly some of those PNTL who deserted with Alfredo Reinado were dismissed outside of the screening process.

It was evident from descriptions provided by UNPOL of how mentoring actually occurred that it was on an ad hoc basis and would be 'dropped' if something else requiring their attention came up. The intention to provide mentoring on a one-to-one basis was impossible to implement. During July 2009 interviews one senior UNPOL commented on the lack of guidance provided on mentoring, saying it was largely necessary to rely on one's own initiative.²⁰⁴ Another UNPOL stationed in Baucau noted there was only one UNPOL designated as 'mentoring officer' and he was "not productive".²⁰⁵

The fifth fiction is that handover decisions will be made in accordance with the four mutually agreed criteria.

The districts of Lautem, Manatuto and Oecussi have already been handed over. However independent logistical requirements do not exist and a heavy dependence on UNPOL for resources persists.

In Lautem, Manatuto and Oecussi, PNTL transport is very limited. Vital resources of the PNTL such as 4WD vehicles tend to be concentrated in Dili, reflecting that they are 'status items', rather than being deployed to the districts and subdistricts where they are needed. Radio communications in all handed-over districts are either totally absent, in short supply or broken, and staff are not adequately trained. Frequently it is not possible to get complete radio coverage throughout the district. PNTL in all three handed-over districts often need to use their own mobile phones for communication and usually buy credit for their phones out of their own funds. This is not reimbursed. Mobile phone coverage is incomplete and patchy in many parts of the districts.²⁰⁶

The commencement of the handover has come about not because the PNTL have been reconstructed or because they fully meet the criteria, but because the government has tired of the relationship with UNMIT and has been pressing for over a year for handover to commence. The districts that have been handed over are relatively 'unproblematic' although still dependent on UNPOL resources to function. The handover process will become increasingly difficult for the UN as more problematic and dysfunctional districts, such as Liquica, Manufahi and Baucau, and the special units are considered.

²⁰⁴ Interview with Deputy UNPOL Commander Lautem 14 July 2009.

²⁰⁵ Interview with Acting UNPOL Police Commander Baucau 15 July 2009.

²⁰⁶ A serious example highlighted by ICG in December 2009 concerns Citrana, in Oecussi district on the border with Indonesia, where there have been recent border incursions by the TNI. The radio repeater station has been out of order since 2005 and there are no other forms of communication (International Crisis Group 2009b: 13).

The situation found in districts that the JTT concluded could not be handed over serves as an indictment of UNPOL's capacity to reconstruct the PNTL. For example, in the district of Ainaro²⁰⁷ serious shortcomings were found. Communications equipment was sub-optimal, transport was inadequate and broken down, weapons and vehicles were not maintained and there was a lack of storage facilities for gasoline and investigation equipment. Staff did not understand human rights concepts, were not familiar with disciplinary proceedings and did not know whether Rules of Organisation Procedure/Normal Operating Procedures (ROPs/NOPs) applied. Community members also expressed concern about the police using excessive force (Joint Field Assessment Team 2009).

The sixth fiction: the handover is a 'joint' exercise' according to a unified plan between UNMIT and the East Timorese government.

Most of those international and national staff involved in the handover interviewed felt that an assessment of the current situation of the PNTL across all districts needed to be carried out. However tensions were apparent in how senior UN and government personnel describe the process and their understanding of the basis upon which the process is proceeding. The UN Police Commissioner Luis Carillho said the handover was being carried out according to the RRRD plan,²⁰⁸ a plan described by the expert policing mission as not being able to be used as a basis for reform of the national police in its current format. The Secretary of State for Security (SoSS), Francisco Guterres, expressed a contrary view. He said the handover was not being carried out according to the RRRD plan but according to the government's Five Year Plan.²⁰⁹ He added that if they followed the RRRD plan "what would be the point of having independence?"²¹⁰ Empirically, however, the handover is not proceeding according to either plan. The SoSS was explicit about his keenness for the handover to proceed. The Commander-General of PNTL, Longuinhos Monteiro, however, did not want to meet, claiming that the handover had nothing to do with him.

There is also disagreement between the UN and the government on how PNTL readiness for the final stage of 'reconstitution' will be determined, and the SA provides little guidance on this phase. As noted previously, the government's proposal is for a comprehensive

²⁰⁷ Ainaro was evaluated by a JFAT 9-14 March 2009.

²⁰⁸ Interview with UNPOL Police Commissioner Luis Carillho 9 July 2009

²⁰⁹ The ICG notes that a month after the release of the Government's Five Year Plan in multiple languages including English senior UN officials admitted they had not read it (International Crisis Group 2009b: 6).

²¹⁰ Interview with Secretary of State for Security, Francisco Guterres 9 July 2009

independent assessment which would gauge the administrative, institutional and operational readiness of the PNTL to conduct executive policing without international assistance. However, the Secretary of State for Security, in his letter to DSRSG Takahisa Kawakami on 9 February 2009 agreeing to the UN resumption proposal, noted that

I believe that we still need to discuss the centerpiece of my proposal – that an international commission be appointed to assess the PNTL during the consolidation phase and provide recommendations to the government and PNTL (Secretary of State for Security 2009).

The UN is uneasy about this proposal because of the ‘independent’ element: they are currently bureaucratically controlling the process, and this proposal would introduce a new variable the UN can not control, with the danger that something might be said or revealed that they were not comfortable with.

In interviews with members of the JFAT it was frequently noted that the process was never really about whether districts were going to be handed over; that decision had already been made. In many ways the process has been skewed to an international perspective with the Assessment Matrix being designed by international staff, produced only in English and all assessment meetings conducted in English. UNMIT also wrote all the notes of the meetings and drafted the ‘joint letters’ for the parties to sign.²¹¹

The seventh fiction is that once a district is handed over the role of UNPOL will be to monitor the performance of PNTL.

For all the same reasons that UNPOL found it difficult to carry out mentoring, they will find it difficult to carry out monitoring. In Lautem a senior UNPOL told me that what they do, post-handover, is to conduct a “veneer of monitoring”.²¹² He felt that he had to force other UNPOL to do their monitoring and that the quality and depth of reports produced were woefully inadequate. For example, he noted that in the course of monitoring no one ever looked in the filing cabinets, which were such a mess that if a case ever came up on appeal they would be hard pressed to find a file. He attributed the poor monitoring in part to the low education levels of some UNPOL. He also criticised the “veneer of mentoring” that had previously been conducted. He attributed this to the reluctance of the previous UNPOL Commander to ‘make waves’ with the result he would never write or allow adverse reports on PNTL. The collective perception of PNTL interviewed is that the principal assistance provided by UNPOL is as glorified taxi drivers, and a source of

²¹¹ Pers. Comm. JFAT member August 2009

²¹² Interview with UNPOL Deputy District Commander Lautem 14 July 2009

generators, fuel, paper, phone cards and computer maintenance. No mention was ever made of imparting policing skills.

The eighth fiction is that the PNTL have been ‘reconstructed’ and is a unified and coherent corps.

A significant number of weaknesses were identified with the PNTL institution following the 2006 crisis. The PNTL suffered from legitimacy problems due to the manner of the institution’s creation. It was characterised by politicisation and factionalisation, there was an absence of adequate regulatory frameworks, what institutional mechanisms did exist were regularly bypassed, there were poor accountability mechanisms, lack of technical skills, lack of discipline and a tendency to use excessive force (United Nations 2006a; OHCHR and UNMIT 2009) The limited effective reach of the police force, due to both logistical and legitimacy constraints, compounded all the difficulties.

Additionally, the need to differentiate the roles of PNTL and F-FDTL and to legislate for the modalities of how the two institutions will work together in exceptional circumstances has been identified as ‘urgent’ for many years now. While the respective roles of the police and army are frequently and increasingly blurred, a variety of other providers of both security and insecurity in East Timor make the notion of a control on the monopoly of force a fiction. Both senior leadership and the rank and file members engage in extracurricular activities unsuitable to those employed in the state security sector. As discussed in chapter 5, this includes PNTL members who are also members of martial arts groups, gangs and other armed groups. In these other roles they are involved in controlling illegal activities such as gambling and prostitution, and reportedly, trafficking in women.

The screening and certification process, which focused on individual officers rather than the institution as a whole, has been of minimal benefit in addressing the institutional issues mentioned above. The integrity of the certification process is weakened by the continuing lack of accountability that PNTL enjoy concerning human rights violations and abuses of authority.

At an individual level, concern for ‘local ownership’, inherent in both the UNMIT mandate and the SA, placed the power to dismiss PNTL members in the hands of East Timorese authorities. As a result no effective vetting took place. It became apparent that the power of UNPOL to ‘not certify’ someone was essentially meaningless, as a number of uncertified officers continued to work and be promoted by East Timorese authorities and PNTL who never registered for the screening process remain on the PNTL payroll.

There is not yet a sense that the PNTL is a unified organization, with PNTL often identifying with their unit – for example being a member of Baucau UIR rather than being a member of the PNTL. In the last year standoffs have occurred between Baucau UIR and Dili UIR in what is essentially a territorial dispute over access to additional allowances.²¹³

The recent appointment of Longuinhos Monteiro as PNTL Commander General has been controversial. Monteiro was not a police officer, and was appointed by government decree contrary to the law requiring approval of the Superior Police Council (F-FDTL – PNTL Hakarak Hamutuk no Lakohi Tane Liman. 2009). Upon appointment he cited his service in the Indonesian army as having prepared him for the job. During his former position as Prosecutor-General the backlog of cases grew into the thousands, although no system seems to have existed to quantify exactly how many cases were outstanding. This does not auger well for PNTL – an organisation already suffering from serious administrative shortcomings. The relationship between the PNTL Commander General and the Secretary of State for Security is non-existent.²¹⁴ Although there appears to be some optimism that the new PNTL Commander-General has the ability to introduce an *esprit de corps*, many concerns remain that the PNTL will become further militarised during his command. It appears that the Commander General is continuing a history of personalised exercise of power with the appointment of uncertified officers with disciplinary and criminal history, albeit considered loyal to him, in a rearrangement of posts in July 2009.

Although some people claimed that the various divisions present in the PNTL such as east/west rivalries, ‘nationalista’/‘antinationalista’ have reduced or disappeared since 2006, others claim they are more dormant than dissipated. I was provided with a number of accounts from both UNPOL and PNTL of PNTL members continuing to ‘favour’ one or other martial arts group depending on their own allegiances.

PNTL District Commanders are essentially ‘stranded’ by a highly centralised, but non-functioning, procurement process. There is no budget for maintenance of movable and immovable property at the district level. There is no decentralised PNTL maintenance and repair capacity or systems for vehicles in any of the districts. Similarly, there is no PNTL system for computer and printer maintenance and virus protection or for maintenance and repair of any of the communications equipment. UNMIT has made it clear that, unlike the equipment handover that occurred at the end of the UNTAET mission, they will not be handing over equipment at the end of the UNMIT mission. However, there is no provision

²¹³ Pers. comm. International security analyst 31 October 2008.

²¹⁴ Interview with East Timorese security analyst July 2009.

in the East Timorese budget for the additional requirements once UNPOL withdraws their resources.

The new East Timorese Penal Code was available in a number of the police stations I visited but both UNPOL and PNTL admitted to continuing to use the old Indonesian Criminal Code or on some occasions continuing to use a mix of both. This will undoubtedly cause problems once cases are brought to court. Training in the Penal Code will be necessary for both PNTL and UNPOL.

The disciplinary mechanisms within PNTL are still unsatisfactory and ad hoc in nature. The disciplinary regulation contains complex algebraic formulae far beyond the educational attainments of PNTL members. Professional Standards and Discipline Office (PSDO) officers in each district are appointed by the District Commander; they are frequently low level agents who have little real authority and are beholden to the District Commander. During the course of the handover assessments in Ainaro district the PSDO officer insisted that there were no disciplinary cases in the district, that no one was ever absent and that no one was ever late.²¹⁵ In Liquica district PSDO files had been stolen by PNTL members.²¹⁶

A credible and fair (but complex) career regime with transitional provisions has been legislated for, promulgated and ostensibly 'socialised'.²¹⁷ However, rank and file PNTL are unaware of its existence or it is poorly understood; information sessions are not delivered in an intelligible manner.²¹⁸ Considerable anxiety exists among PNTL members about forthcoming changes in relation to career structure, with concern expressed that the new arrangements "will make trouble in the future". This reflects a broader problem within the institution, namely that in the absence of regular, credible internal communications about what is going on within the PNTL, members are left to assume the worst. A positive aspect of the career regime is it is designed to prevent those PNTL facing disciplinary or criminal proceedings from being promoted, something that the certification regime has been unable to do.

²¹⁵ Interview with JFAT member, Dili, 5 July 2009.

²¹⁶ Pers. comm. JFAT member, August 2009.

²¹⁷ Decree Law 9/2009 Organic Law of the Polícia Nacional de Timor-Leste (PNTL), Decree Law 10/2009 Salary Regime of the Polícia Nacional de Timor-Leste (PNTL), Decree Law 16/2009 Regime of Promotions of the Polícia Nacional de Timor-Leste (PNTL).

²¹⁸ Interviews with PNTL in Lautem, Baucau, and Dili July 2009, interview with East Timorese security analyst July 2009.

6.8 Conclusion

In this chapter I describe the crisis of 2006, the resultant international interventions and the mechanisms deployed for reconstruction of the police and reform of the security sector. I conclude that the PNTL have not been reconstructed in any meaningful way. UNPOL have now had two opportunities to (re)construct the PNTL and many of the mistakes of the first attempt have been repeated the second time. However, on this occasion UN effort has been focused on enacting rituals of comfort to give an impression that security will be improved.

Many of the important tasks, identified by the Special Envoy in 2006, necessary to reform and reconstruct the PNTL, have not been completed (or in some cases even commenced). Most of the serious shortcomings of both UNPOL and PNTL, identified by the UN expert policing mission in 2008, have not been addressed. The question needs to be asked why these recommendations have not been heeded by the UNMIT mission. Although many of these critical issues have begun to be apprehended at DPKO headquarters level, little of this is implemented in the mission environment. UN practice in the margins of the East Timorese state appears to bear even less relation to headquarters, or Dili, policy. Police reform outcomes have been poor and relationships between UNMIT/government of East Timor and UNPOL/PNTL have remained weak. These factors, together with a range of structural problems in UNPOL, mean it is unlikely that delaying handover would have improved PNTL reform prospects.

In this chapter I drew on the work of Braithwaite, Makkai and Braithwaite on regulatory ritualism. I described how rather than co-operating in a reform process both the East Timorese government and the UN have carried out a process of mutually reinforcing ritualism designed to obscure a lack of engagement with, or capacity to carry out, police reform. I describe how three of Merton's identified responses to a normative order – ritualism, rebellion, and retreatism – are used in particular combination by actors in East Timorese police reform. Although the agendas of the government and the UN differ, they have congruent interests in an enactment of a police reform ritual, sustained by believable fictions.

The East Timorese authorities are mostly keen for international forces to leave, as evidenced by numerous rebellious stances and criticisms of an international presence. This is tempered however by needing continued access to the accompanying material resources and the importance of being considered a successful rather than failed state. This is despite exhibiting great ambivalence towards the notion of impartial and accountable state

institutions, evidenced by the ongoing personalised exercise of power in contravention of East Timor's Constitution and laws.

The UN is mindful of the need to address their shortcomings in building the PNTL the first time and is consequently highly focused on producing a police reform success story. By using the rhetoric of local ownership and engaging in retreatism the UN seeks to absolve itself of failure to reform the PNTL.

The consequences of such an enactment of regulatory ritualism are serious. All poorly executed reform attempts leave legacies of suspicion and disengagement that are difficult to undo. The ritualism has served to further institutionalise fragility in a weak institution.

In chapter 7 I will focus on how the attacks on the President and the Prime Minister in February 2008 resulted in declarations of states of emergency and states of siege and the creation of a Joint military-police Command. This resulted in significantly rearranged relationships between international and national security actors; and between the F-FDTL and the PNTL. These events further highlight the consequences of ritual engagement.

Chapter 7

State of emergency, state of siege or state of mind?

7.1 Introduction

In this chapter I analyse how the attacks on the President and Prime Minister of East Timor on 11 February 2008, and the subsequent implementation of the states of exception²¹⁹ and associated activities of the Joint Command, served not only to rearrange the power relationships between international and national security actors, but also to create a trajectory of change regarding the respective responsibilities and roles of the police and military in East Timor.

In chapter 6 I argued that both UNMIT and the East Timorese government have approached police reconstruction and security sector review ritualistically, with no substantive reform having taken place. These chimeric processes continue to be shaped by the resonances of the colonial and resistance histories of East Timor, discussed in chapter 2, and informed by the first attempt to build a police institution in East Timor, as detailed in chapter 3. The processes have been influenced by sensitive issues of relationship, capacity and sovereignty.

In this chapter I commence with an account of the events of 11 February 2008. I then examine the implementation of the states of exception and the Joint Command and the immediate effects on human rights and the rule of law in East Timor. I continue by describing the reluctance of the political leadership to wind up the Joint Command and document a number of ways in which the ‘exception’ endured after it was formally concluded. Next I interrogate a suite of recent defence, internal security and national security bills being considered by Committee B²²⁰ of the East Timorese National Parliament that blur the areas of Defence and Security. Finally, the longer term significance of states of exception is outlined. Drawing on the work of theorists of the ‘state of exception’ such as Carl Schmitt and Giorgio Agamben, I argue that these events have served not only to rearrange the power relationships between international and national security actors, but also to create a trajectory of change regarding the respective responsibilities and roles of

²¹⁹In this thesis I use the collective term “states of exception” to include a variety of exceptions to the legal and constitutional norm such as “states of emergency”, “states of siege” or “martial law” which may have specific legal meanings in particular national jurisdictions. State of exception is also a term employed in the theoretical work of authors such as Schmitt, Benjamin and Agamben. See e.g. Schmitt (1985), Agamben (2005) and Benjamin (1969). Other authors such as Gross and Ní Aoláin (2006) use the term “emergency” as their collective term.

²²⁰ The East Timorese national parliament includes a committee system that considers legislation following approval by the Council of Ministers and before being considered in plenary session in Parliament. Committee B is responsible for the area of defence and security.

the national police and military in East Timor. In particular I argue that the draft security legislation is evidence of ‘the exception having become the norm’ in East Timor, with significant consequences for the development of their security sector. I draw on the work of contemporary analysts of Asian exceptions and states of emergency to demonstrate that although the Schmitt’s theories of exceptionalism were derived in very different circumstances, they have extraordinary resonances in broader application. I do not explicitly engage with the extensive debates concerning Schmitt as it is beyond the scope of this thesis.

This chapter illustrates the difficulties associated with externally-led police-building and security sector reform. The often-stated ideal of local ownership of such processes does not always manifest in the manner anticipated by those external actors charged with constructing or reconstructing security forces and may in fact operate counter to stated aims such as clear separation of the roles of the police and military and democratic control of security forces. The chapter also illustrates how an enactment of ritualism can lead to an enduring exceptionalism.

7.2 The events of 11 February 2008 OR “Who’s in charge around here?”

On 11 February 2008 the President of East Timor, José Ramos-Horta, was taking his customary early morning walk along the beach near his house in Areia Branca, a fairly sparsely populated area a couple of kilometres to the east of the capital Dili. He was accompanied by two F-FDTL soldiers, as he did not want to wake up the PNTL officers allocated to his close protection (UNMIT 2008e: 7). A group of armed men, led by Major Alfred Reinado, arrived at the President’s house at approximately 6.15 am and attacked the house. All but four of the thirteen F-FDTL on duty that day and guarding the perimeter of the President’s compound promptly abandoned their posts (UNMIT 2008e: 8). Around 7 am Reinado was shot dead by a military police officer along with one of his lieutenants, Leopoldino Exposto (LUSA 2008: 10; Toohey 2008b; UNMIT 2008e: 7).

Upon hearing gunfire Ramos-Horta hurried back to his house where he received shots to the stomach and chest critically injuring him. One of his guards was killed. Ramos-Horta subsequently underwent surgery at an Australian military base and was then evacuated to Darwin for further surgery, where he remained for nine weeks (LUSA 2008; Toohey 2008b: 12).

About an hour and a half after the first attack another armed group, led by Lieutenant Gastão Salsinha,²²¹ attacked the convoy of the Prime Minister Xanana Gusmão who was travelling into town from his home in Balibar in the hills outside Dili. The Prime Minister and his entourage managed to escape, but Salsinha and his men proceeded to the Prime Minister's house, apparently searching for weapons (LUSA 2008). The terrified wife and children of the Prime Minister were forced to hide under the bed.

Later that day a state of siege was declared²²² by the Acting President, Fernando de Araújo ("Lasama")²²³, following authorisation from the Parliament. The state of siege was renewed four times.²²⁴ On the third occasion it was extended in seven Western districts but was downgraded to a state of emergency in five districts and one district was returned to normalcy. On the fourth and final occasion it was extended solely for the District of Ermera until expiring on 22 May 2008. The President ended the states of exception on 23 April in all other districts.

Immediately following the 11 February 2008 attacks there was an eruption of finger-pointing, claim and counterclaim regarding perceived shortcomings in security provision. It was alleged that UNPOL and the ISF refused to assist the wounded President and were generally unavailable for the protection of the Prime Minister (ABC News 2008a). The Commander of F-FDTL, Brigadier-General Taur Matan Ruak, called into question the capacity of ISF, UNPOL and the PNTL to prevent the attacks. The UN responded that the F-FDTL, and not the UN, was responsible for perimeter security of the leaders' residences (Williamson 2008). Additionally, the UN claimed in a confidential report into the attacks that UNPOL had come to the aid of the President in minutes and fought off the Prime Minister's attackers (UNMIT 2008e).

The confusion is instructive. It illustrates both the real and perceived lack of clarity inherent in the security arrangements that had been put in place between the UN Police, the ISF and the indigenous security forces. The language of the debate about responsibility for security provision not only illustrated the complex and ambiguous arrangements in place, noted in chapter 6, but also highlighted that the relationship between international and national security actors was under considerable strain.

²²¹ Lieutenant Gastão Salsinha led the group of 591 disaffected F-FDTL members known as the petitioners discussed in chapter 6.

²²² Presidential Decree 43/2008.

²²³ de Araújo's substantive position is President of the East Timorese National Parliament.

²²⁴ Presidential Decrees 44/2008, 45/2008, 48/2008 and 49/2008.

On the day of the attacks, the Prime Minister of East Timor, with support from the National Parliament, invited 120 additional ISF and seventy AFP from Australia (UNMIT 2008e: 6). Unlike police already on the ground the new deployment of police was specifically not required to serve under the UN. This added to existing confusion about security arrangements.

7.3 The implementation of the states of exception and the Joint Command

The Joint Command was formally created on 17 February 2008 by a resolution of the Council of Ministers, although by this time it had already been in operation for several days. The formation of the Joint Command caught UNMIT by surprise, but they quickly endorsed it, making note of East Timor's status as a sovereign nation.²²⁵

By late February 2008 the Joint Command claimed to have 1 305 PNTL/F-FDTL members involved in operations and that it could increase this number to 3 000 if required (Joint NGO Safety Office 2008a). The period of time covered by the states of exception and the operation of the Joint Command was notable for an escalation of human rights abuses, abuses of authority by security personnel and an increased disregard for the rule of law. During this time the relationship between international and national security forces also deteriorated. Conversely, and somewhat unexpectedly, the previously poor relationship between the PNTL and the F-FDTL appeared to improve.

The *modus operandi* of the Joint Command was not entirely new, recalling some of the dubious methods employed by the Dili PNTL Task Force from its inception in December 2007. This Task Force was established as a mobile police unit to respond to policing situations that required a specialised response. The Dili Task Force, like the Joint Command, had been formed without prior consultation with UNPOL, in contravention of the Supplemental Arrangement between the UN and the East Timorese government. A lot of people have noted that the Dili Task Force and the Indonesian *Brimob* are very similar in appearance and demeanor. Most of the Task Force members joined the Joint Command once it was formed.

Allegations of human rights abuses and abuses of authority implicated members of the Task Force, but were also specifically attributed to the Joint Command, the PNTL (including the UIR) and the F-FDTL (including military police). These allegations included ill-treatment of civilians, pointing of weapons and death threats, in addition to failure to

²²⁵ When interviewed in July 2009 UNPOL Police Commissioner Luis Carillho, who was not Commissioner at the time of the Joint Command, expressed both concern and mystification about how this could have occurred.

comply with legal procedures when carrying out arrests and home searches (OHCHR and UNMIT 2008: 6). Research by the Provedor's office found that approximately forty percent of those arrested alleged they had suffered ill-treatment by the police at the time of arrest (Provedoria dos Direitos Humanos e Justiça 2008b). Quite quickly a sense that the uniformed forces could now do anything, including settling old scores and singling out people for political purposes, started to pervade Dili. Specific incidents included threats to shoot an MP and judges who were on the way back to Dili from a funeral in Bobonaro (UNMIT 2008f), the arrest of FRETILIN MP Jose Teixeira without warrant, apparently on the personal initiative of the Deputy Police Commander PNTL (FRETILIN 2008b) and the arrest and beating of a layout editor from the Timor Post newspaper (Mckenna 2008). The armed forces engaged in numerous displays of authority and acts of intimidation unrelated to catching rebels. People were taken off buses or stopped on their motor bikes and forced to do pushups in the street. Tinting was removed from the windows of private cars and an F-FDTL unit met with the community in Zumalai in Covalima and demanded that men with long hair must cut it off (Joint NGO Safety Office 2008b).

The economic effects of the state of siege were also significant, with the Provedor noting particular difficulties arising from the imposed curfew for people who undertook economic activities at night. The ability to take part in family rituals surrounding death and funerals was also affected. The district of Ermera in particular felt the effects of the state of siege, with residents frequently targeted and accused of having provided material support such as food to Salsinha and his supporters. There were reports that farmers were too scared to harvest their coffee for fear of encountering a Joint Command patrol (Provedoria dos Direitos Humanos e Justiça 2008b).

7.4 Further unravelling of the rule of law - parties, parades and pardons

It is often noted that the rule of law in East Timor suffers from a lack of technical development. The inconsistent political will associated with the application of the law and concerns about an increasing culture of impunity in East Timor were discussed in chapter 4. During the period of the states of exception and the Joint Command there were significant deviations from the rule of law, as well as an increase in impunity. This was evident in inadequate official responses to claims of human rights violations and abuses of authority, as well as the tendency to deal with abuses by security personnel in informal ways including *ex gratia* payments for affected individuals and communities. It was also manifest in the irregular, some would say bizarre, processes related to surrender, arrest and detention of rebels involved in the attacks. Finally, it was apparent in the announcement by the East Timorese President of pardons for people convicted of serious crimes of violence that

occurred in 1999 and 2006, right at the time that those accused of trying to kill him on 11 February were preparing to surrender. The culture of impunity in East Timor thus provided a receptive environment for the conduct of the Joint Command and also facilitated the creation of an enduring emergency.

As allegations arose concerning violations and abuses of authority associated with the states of exception, the respective authorities repeatedly stated their wish that those accused should be held accountable. These public statements were not followed by action. The Commander of F-FDTL appeared before Parliament on 24 April 2008 and stated that twenty eight complaints of human rights abuses by the Joint Command had been received, fourteen soldiers had been reprimanded and serious allegations would be referred to the Prosecutor-General for investigation (OHCHR and UNMIT 2008: 3). However as of June 2009 none of those allegedly responsible for the violence had been brought to justice (OHCHR and UNMIT 2009: 10).

Although the Joint Command commenced investigation into some of the cases submitted by UNMIT's HRTJS, there were some cases the Joint Command determined to be 'false' when in reality they needed further information. Once the Joint Command was disbanded it appears most cases were not followed up.²²⁶ Similarly, the SRSG in his report of 29 July 2008 noted that

little progress has been evident in investigating or assigning accountability for the violations committed during the early phase of the state of siege, and the team established by the Joint Command responsible for such investigations has been disbanded along with the Joint Command (United Nations 2008f: 2).

The SRSG went on to stress the risk that "those incidents will further entrench inappropriate modes of behaviour and the already widespread perception that the security and defence forces enjoy impunity" (United Nations 2008f: 2).

It appears that few cases came into any contact with the formal legal system. In the majority of cases the authorities decided to resolve abuses 'traditionally', with compensation of money or foodstuffs to individuals or affected families, including the case of a mentally ill man shot dead. One of the most disturbing examples of this practice was in response to communities in Ermera who had alleged beatings and aggressive interrogations by military personnel. The East Timorese government acknowledged that "inappropriate tactics" had been used and proceeded to allocate \$US 600 to each of 52

²²⁶ Interview with UNMIT HRTJS staff July 2008.

communities that had complained for the purposes of holding belated Easter parties, on the condition that military and police officials be invited (ABC News 2008b).

On 2 March 2008 “Susar” (Amaro da Costa),²²⁷ one of the chief suspects in the shooting of the President, surrendered and was brought by helicopter to Dili where he was immediately paraded before journalists and made potentially incriminating statements, before being presented to the Prime Minister and chief of F-FDTL. A flyer was later distributed by the Joint Command, showing Susar hugging the chief of the F-FDTL, Brigadier-General Taur Matan Ruak, and Interim PNTL Commander-General Afonso de Jesus, as well as being accompanied by attractive women. Reportedly, this kind of orchestrated surrender, which was intended to imply a reintegration with the state, was a common practice during the Indonesian occupation, when it was referred to with the Indonesian term “*sandiwara*” or “play” (Jolliffe 2008).²²⁸

During this period there was an announcement of a large number of pardons by the President, without due process,²²⁹ for people convicted of violent crimes carried out in 1999 and 2006. Bizarrely, these pardons were announced on 23 April at the same time that those accused of trying to kill the President were on the point of being apprehended, creating an impression that the accused, his attackers, were also unlikely to face justice. By 26 April Salsinha was formally negotiating his surrender with F-FDTL. At the time of the announcement of the pardons International Crisis Group South East Asia Project Director, John Virgoe, speculated that the pardon announcement could be a tactic to lure Salsinha to surrender, with an implicit promise of a future pardon or amnesty (Michelmores 2008).

There were also significant irregularities related to the surrender and arrest of those alleged to have been involved in the attacks of 11 February. A HQ for the Joint Command was established opposite the lighthouse in Memorial Hall in the beachside suburb of Farol. This complex contained an ad-hoc detention and interrogation centre controlled by the Joint

²²⁷ Susar was a former Falintil leader who joined the PNTL in 2001, becoming a body guard for the former PNTL Police Commander Paulo Martins. He deserted from the PNTL in 2006 and joined Alfredo Reinado in Maubisse. Following Reinado’s incarceration he helped organise the jailbreak in which Reinado and others escaped and was involved in an incident in which border police were relieved of their weapons by Reinado’s group (Toohey 2008a).

²²⁸ Also Pers. Comm. Aderito de Jesus Soares 24 October 2008.

²²⁹ Presidential Decree 53/2008. Presidential Pardon of 20 May. A group of eleven East Timorese citizens launched an unsuccessful legal challenge to the decision of President of the Republic to grant executive clemency to ninety-four prisoners on 20 May 2008. On 27 June 2008, the citizens delivered a petition to the Provedor asking him to use his powers according to Section 150 of the Constitution to request that the Court of Appeals examine the constitutionality of the law. Included in the list were Tim Alfa militia leader Jhoni Marques convicted of Crimes Against Humanity in 2001 and former Minister of the Interior, Rogerio Lobato, convicted in 2007 of arming civilians during the 2006 crisis.

Command and F-FDTL. No legal authorisation of this detention centre was ever made and F-FDTL, rather than prison officials, undertook guard duties. An unofficial detention center violates international human rights law and increases the danger of ‘disappearances’. There are conflicting reports as to the procedures that were followed with those men who surrendered during April, but it is clear that these were not in accordance with the law. Several men were held for periods between eleven days and a month. Some of these men were released without ever being brought before a judge whereas others were brought before a judge after a month, considerably longer than the seventy two hours allowed by law.²³⁰ In response to a question from journalist Jill Jolliffe, UN Police Commissioner, Rodolfo Tor, denied that suspects were being interrogated by the East Timorese army and police without the presence of lawyers, stating that the UN has “full confidence in PNTL and FDTL”. The same journalist, however, reported that a UN legal source had contradicted the statement, claiming that seven of the twenty-three suspects were routinely questioned without the presence of lawyers, in contravention of the law (Jolliffe 2008).

When the largest group of rebels surrendered on 29 April 2008 the theme that had commenced with the use of the Easter parties continued. Gastão Salsinha and his group were accompanied by a military and police convoy to Dili in order to surrender formally. A ceremony was held at the Government Palace. Following a press conference at the headquarters of the Joint Command a party was thrown with the rebels as guests of honour. The men accused of having tried to kill the President and Prime Minister less than three months previously danced the night away, together with the police and military that had been pursuing them through the mountains. Apparently the issue of arrest warrants was not attended to until the following day (AAP 2008).

7.5 The continued role of the Joint Command

Although the final state of siege, upon which the Joint Command ostensibly relied for its legitimacy finished on 22 May 2008, there were no immediate moves to disband it. On the contrary, the weeks leading up to this point had been characterised by a search among the political leadership for new things to do with the Joint Command.

On 29 April 2008 Gastão Salsinha finally surrendered along with twelve of his supporters. The previous two months had seen smaller numbers of ‘rebels’ hand themselves in. From the time of the surrender there was no suggestion that other rebels were still at large. It was at this point that President Ramos-Horta started to speculate on the future of the Joint Command. In a Radio Australia interview on 30 April, the President stated that “The Joint

²³⁰ Pers. comm. UNMIT HRTJS staff 11 November 2008.

Command will continue indefinitely until I decide, upon consultation with the PM, parliament and others, that conditions exist to finish the joint command activities. We are going to continue to search for weapons in Dili, we are going to get rid of illegal weapons in the hands of people". In the same radio story it was announced that "The president also confirmed the state of siege in Ermera district will remain in place until May 22, as the joint command take up their new mandate to search for illegal weapons" (ABC Connect Asia Programme 2008c). Several days later the new mandate of the Joint Command was confirmed by the Secretary of State for Security, Francisco Guterres, in the Timor Post newspaper: "If there is information about weapons carried by people, then there will be an investigation into those weapons to know their serial numbers, regardless of whether the weapons are those that are missing or not". Despite an ever-diminishing supply of weapons being handed in, and no industrial weapons being found, a series of extensions to the weapons collection program was announced, including on 15 August, 30 August, and 3 September 2008. On 6 May 2008 the Joint International NGO (JINGO) Safety Advisor noted in his weekly report that "The Government has sent mixed messages regarding the future of the Joint Command", going on to detail the varied and sometimes contradictory stories regarding the future of the Joint Command (Joint NGO Safety Office 2008c).

On 8 May 2008 the President declared that the state of siege in Ermera had finished but there was no move to wind up the Joint Command and the JINGO office noted that the declaration ending the state of siege appeared not to have been implemented (Joint NGO Safety Office 2008d). However, during May and June military and police elements of the Joint Command remained stationed around the country, in particular in Ermera, Covalima and Bobonaro as well as in Dili which had twenty-two police posts and five check posts under the supervision of the Joint Command (Joint NGO Safety Office 2008d, 2008e, 2008f).

When the Joint Command was formally disbanded, the Council of Ministers announced in the same decree that the Joint Command had been so successful in restoring "constitutional normalcy" that they had decided to create a "coordination structure within the Ministry of Defence and Security which can plan and respond effectively in case of natural disasters or political and social crises that threaten the national stability", and that this new structure would be called the Centre for Integrated Management of Crisis (Democratic Republic of East Timor 2008).

A parade and closing ceremony to mark the end of the Joint Command was held on 19 June 2008 at the Dili Stadium. The President congratulated the Joint Command on its

work, but stated that the PNTL and F-FDTL would continue to work closely together. Observers of the ceremony noted that there was actually no official declaration of the closing of the command during the ceremony (Joint NGO Safety Office 2008g).

Notwithstanding the legal disbanding of the Joint Command and the accompanying ceremonies, the Joint Command continued to operate, notably in Ermera where 100 troops were stationed, and house searches continued in Maliana and in Suai. Reports of F-FDTL (rather than Joint Command) activity was also reported in Dili with the conduct of patrols around the western side of Dili, purportedly because of an increase in Martial Arts Group (MAG) activity, and the attendance of F-FDTL (together with UNPOL and PNTL) to provide security at a student demonstration outside the Parliament on 12 and 13 June 2008 (Joint NGO Safety Office 2008d, 2008h, 2008i).

The political leadership continued to invoke the Joint Command, most notably when opposing the ongoing presence of the ISF and UNPOL. On 30 September the Prime Minister Xanana Gusmão lamented that, whereas East Timor is an independent country, the movement of its Defense Force and its National Police is limited, while Australian soldiers carried weapons: “You cannot do it (carrying weapons around) while *malaes* (foreigners) can; what kind of independence is this?” questioned Gusmão. He went on to request the officers of both F-FDTL and PNTL to keep the “spirit of joint operation” to show that they are ready to take responsibility of securing and defending the sovereignty of East Timor.

7.6 The draft national security laws

This section details three draft laws that were admitted to the East Timorese Parliament on 29 June 2009, and were subsequently considered by Committee B. They are Government Bills n. 25/II “Lei de Segurança Interna” (Law on Internal Security), 26/II “Lei de Segurança Nacional” (Law on National Security) and 27/II “Lei de Defesa Nacional” (Law on National Defense) (UNDP 2009a).²³¹

The draft laws mentioned above create a confusing tapestry. They are collectively contradictory and have unnecessary overlaps. They refer to outdated governmental structures, create an extraordinary number of new bodies for a small nation, which will be difficult to implement, and are unclear in many other respects. These aspects of the laws will not be detailed here. The focus of this section will be the explicit and implicit links to

²³¹ The draft laws have all been approved by the Council of Ministers. On 29 June 2009 they were admitted to Parliament and referred to Committee B for consideration. I have relied on unofficial English translations of the laws.

the Joint Command that are made in the legislation. In the next section of this paper these aspects of the legislation will be analysed using theories on how states of exception 'become the norm'.

In chapter 5 I detailed the calls over many years, many of them deemed 'urgent', for a national security policy and accompanying legislative framework that would describe how security is to be provided for the state and its citizens. However, although in 2009 national security policy and a national security law were both being drafted, no national security policy or Military Aid to a Civil Power legislation has been concluded. Rather than the drafting of the law and the policy being carried out in a sequential and coordinated process, the national security policy was drafted by advisors in the Office of the Secretary of State for Security while the national security law was drafted in the Office of the Secretary of State for Defence. As described in chapter 5, the practice has been on many occasions that the F-FDTL are called in on an ad-hoc basis in addition to, or instead of, the PNTL, in contravention of the roles delineated for the two organisations in the East Timorese Constitution. This was also detailed in relation to responses to attacks in Atabae and Atsabe in 2003 in chapter 3.

Although the new suite of legislation recites the constitutionally separate roles of F-FDTL and PNTL (to the point of monotony), it does nothing to clarify the situation, as all attention is on the extraordinary rather than the everyday mechanisms of managing security. The National Security Law, instead of comprehensively examining security provision at a national level, only regulates the joint deployment and operation of the F-FDTL and PNTL. As well as explicitly valorising the model of the Joint Command, it is made clear that this will form the model for national security and internal security in the future. It formalises the move of F-FDTL into the realm of internal security, but does so in a way that remains opaque. Both the draft Law on National Security and the draft Law on Internal Security cite the Joint Command in their preamble or explanatory statement, with the Law on Internal Security noting that

There is a need to adopt a more comprehensive notion of Internal Security. Indeed, the traditional separation between Defence (External Security) and Internal Security is becoming increasingly blurred. The two areas are no longer hermetically sealed and that is why an effort should be made to get the most out of the supplementary and subsidiary nature of the different actors in the Security System from an integrated and systemic perspective.

The Law on National Defence cites new challenges to the State as a result of 11 September 2001 and the events of 11 February 2008. Similarly the Law on Internal Security cites the

necessity of providing “preventative measures in the realm of internal security” as a result of the crisis of April 2006 and the events of 11 February 2008.

The draft Law on National Security makes provision for an Integrated System of National Security (Article 18) which will be the only circumstances under which joint operational deployment can occur. However, the draft law on National Defence (Explanatory Statement) foreshadows an Integrated System for National Defence which “provides for the joint deployment of forces and services in these two realms, thus distancing itself from the traditional distinction between “National Defence” and “Internal Security””.

Article 29 of the draft Law on National Security creates the Integrated Centre for Crisis Management. The Centre was foreshadowed as a successor to the Joint Command at the time the joint command was disbanded, and was budgeted for as early as last year. One of the most interesting aspects of the Centre contained in the legislation is that the Director of the Centre will have a rank equivalent to that of Secretary of State for remuneration purposes. A position that is equal to the Secretary of State for Security and the Secretary of State for Defence implies that the ‘crisis management’ that is being anticipated is an everyday rather than an extraordinary event.

Another aspect of concern in the draft National Security Law is to be found in unclear provisions in Article 8(2-3) of the draft National Security Law which state that “besides their primary mission, the F-FD TL may be employed additionally in other missions in support of civilian authorities within the framework of the Integrated System of National Security...(Art. 2)”, and that “For the purposes stated in the paragraph above, F-FD TL shall develop civilian-military cooperation capabilities, with a special focus on the **traditional social-cultural structure** [emphasis added] of the country”. Previously I noted in chapter 2 the pervasive presence of the Indonesian military during the period of occupation, arranged through a structure of territorial military command which shadowed Indonesian civilian officials all the way down to the village level (Robinson 2003: 212; Lindsey 1999). Although the intent of the legislative provisions is unclear, it does raise the rather important question of whether something akin to the Indonesian ‘*dwifungsi*’ (dual function) doctrine and accompanying territorial command structure is being anticipated. This aspect of the legislation is also interesting in light of subterranean battles in the lead-up to the October 2009 *sucu* elections in East Timor. Both CNRT and FRETILIN

expended effort trying to gain control of the old *selcom* or clandestine structures at village level ahead of the election.²³²

The recent history of legislative development in this area is also of interest. On 17 March 2008, a month after the creation of the Joint Command, Brigadier Taur Matan Ruak sent a proposed Law on Defence and Security (hereafter “the TMR law”) to the National Parliament. Submitting legislation to the Parliament is not within the Constitutional mandate of the Chief of the F-FDTL, and the matter went no further. It does however provide a window into the thinking within the defence establishment at that time. The TMR law had originally been drafted in November 2006. Like the other laws discussed in this section this draft law is full of poorly written aspirational statements and is difficult to follow. One of its most unusual aspects is the footnotes that it contains to the Maharishi’s theories of “Absolute Theory of Defence, Sovereignty in Invincibility” and “Principles to create Invincibility for Every Nation and Lasting World Peace”. It foreshadows in a number of ways the need to “integrate” and “conjugate” military and non-military components of security and defence policy. Although this legislation never saw the light of day, many of its aspects have now been incorporated into the new security legislation.

Now that the national security law has been approved by the Council of Ministers, it is likely that the national security policy that was being drafted will be abandoned, in particular as the national security law is highly prescriptive about what the national security policy should contain. An adviser in the Secretary of State for Security’s office subsequently described the national security policy as a “dead duck”.

7.7 The significance of states of exception

In this section I make five main arguments. First I argue that the declaration of the states of exception in East Timor commencing in February 2008 served another function over and above responding to attacks on the President and Prime Minister, that of ‘reclaiming’ sovereignty from international security actors. Secondly I contend that the veneer of legalism associated with the declarations served to divert attention from the major legal and procedural irregularities occurring at the time, and that in fact a deepening culture of impunity was spreading with little opposition from the UN. Thirdly I contend the Joint Command and its remnant traces have served as a proxy for a continuing state of exception. In the fourth and fifth subsections I argue that the Joint Command can be understood as a critical juncture in redefining both the relationship between international and national security actors, but also between the F-FDTL and the PNTL. Finally I argue

²³² Pers. comm. East Timorese security analyst July 2009.

that the various draft security laws that are currently with Committee B of the East Timorese Parliament represent a case of “the exception becoming the rule”.

7.7.1 Sovereign is he who declares the exception (Schmitt 1985)

On the face of it the declarations of states of siege and states of emergency that occurred in East Timor in 2008 are an entirely proportionate response to an attack on the organs of state. They can be understood as a measured, understandable and constitutional response. However, I argue that the states of exception are better understood as an assertion of sovereignty by the East Timorese government over their armed forces, in particular the police, at a time when their sovereignty was contested.

A mechanism for dealing with unexpected events that threaten a sovereign nation, whether as a result of natural disaster, insurrection, civil war or military invasion, is important. Although it is not possible to define the exact nature of emergencies until such time as they happen - they are by definition unforeseen - there is a sense that we will know one when we see one. It is understood that emergencies are a crisis, something out of the ordinary. It is, in fact, everyday normalcy that allows us to recognise an emergency.

Although the previous FRETILIN government had invited foreign troops and police to assist as a result of the 2006 crisis, and this was followed by requests for UN intervention, this encroachment on national sovereignty never sat comfortably with any of the political elite in the newly-independent country. As described in chapter 6, by February 2008 relations between international and national police and military were poor, and the leadership had tired of the foreign presence. The confusion over who was responsible for security for the President, and who should have been watching Alfredo Reinado, was arguably the final straw that produced the decision not only to declare a state of exception but also to pull the PNTL out from under UNPOL command and place it, instead, under the F-FDTL. The F-FDTL with their resistance antecedents have, after all, always been regarded as having much greater credibility, as opposed to the poorly regarded PNTL, when security is at stake.

Carl Schmitt (1985), a major theorist of the state of exception, argued that sovereignty is determined, not by the everyday workings of the pillars of the state, but rather by the suspension of all those things through the declaration of an emergency. As Oren Gross argues:

for Schmitt, the exception not only confirms the rule but is the source of the rule's very existence. In as much as crises represent the sphere of the political (indeed, the apex of politics) and given the primacy of politics over

all other spheres of human endeavor (including law), Schmitt argues that it is the exception that defines the norm and not vice versa--the exception is primary to the norm and defines and informs that norm. In short, "[t]he rule proves nothing; the exception proves everything" (Gross 1998: 31, n11).

Schmitt is most famous for his contention that "sovereign is he who declares the exception" (Schmitt 1985: 5). Schmitt's concept is central to understanding the implications and consequences of the declarations of states of exception in East Timor in early 2008.

Although I argue that declaring of the states of exception was symptomatic of the struggle for sovereignty over the security forces and was done in opposition to the authority of the UN, there was little protest from the UN. In the next subsections I contend that, in the main, the UN was satisfied by the form of the states of exception, while being less concerned with its substance and consequences.

7.7.2 The veneer of legalism

In this section I argue that, while flawed, the effort that the East Timorese government expended on the legalistic aspects of declaring the states of exception and the Joint Command served to ensure that international criticism of the process was kept to a minimum. The declarations of states of siege and states of emergency were made in accordance with Section 25 (1-6) and Section 85(g) of the East Timorese Constitution. Framework legislation (Law 3/2008) was passed on 22 February 2008, which for the first time provided definition of, and differentiation of, states of siege and states of emergency. It also placed a number of limitations on the suspension of normalcy and attendant rights. The legislation also contains a requirement for renewals of states of exception to be "strictly necessary". These safeguards ensured UNMIT's compliance, as it was keen to support the notion that it was respecting the wishes of a sovereign nation, instantiating 'local ownership'. UNMIT's support was arguably also conditioned by uneasiness about its own performance in relation to the attacks of 11 February.

Declarations of states of exception almost universally involve the suspension of civil and political rights. It has also been well-documented that even those exceptions that are declared in strict conformity with constitutional and other legal provisions nevertheless open the door to human rights abuses. As Rajagopal (2003: 177) has noted "These emergencies have become a standard coercive tool in the repertoire of states to maintain law and order".

It is recognised that postcolonial states such as Malaysia, Singapore, Sri Lanka, Fiji, Indonesia and others have drawn on colonial legacies and experience in their enthusiastic

suspension of civil and political rights. The mechanism of emergencies (both *de jure* and *de facto*) has been used to manage resistance and maintain 'law and order'. This is elaborated on by authors such as Lev (1985), Jayasuriya (2001) and Rajagopal (2003). The case of East Timor is no different. As discussed in chapter 2 Timorese thinking about development of the security sector has been greatly influenced by the authoritarian resonances of both colonial and occupation history. The model of a police force under military command is a familiar feature of East Timorese history. When the Portuguese returned to East Timor after World War II, the police came under military command. Similarly ABRI from its inception had a responsibility not only for external defence, but also for internal security, and until 1999 the police, similarly, came under military command.²³³

States of exception not only result in the suspension of normal political processes but also facilitate radical reorganisation of the apparatus of power, resulting in "extensive centralisation of power and increased reinforcement of the coercive powers of the state" (Jayasuriya 2001: 110). As exceptions become normalised, political elites no longer use states of exception or specialised legislation in order to curb the actions of oppositional political elements. In both Malaysia and Singapore the infamous Internal Security Acts are now little invoked but normal civil and criminal law is used instead to "intimidate and crush political opposition". Examples include the treatment of Anwar Ibrahim and his defense lawyer in Malaysia and the routine use of defamation and contempt charges in the same country (Jayasuriya 2001: 110-11). Jayasuriya (2001: 113) proposes that the use of the everyday law, or legalism, in this way normalises and legitimises authoritarian and exceptional rule in a way that would not be so readily accepted if emergency powers themselves were being used. I would argue, however, that initial exceptional powers are the portals through which these changes take place.

The suspension of civil and political rights during states of exception is legitimised by Article 4 of the ICCPR, which allows for the rights mentioned in the covenant to be suspended, with the exception of certain 'non-derogable' rights. The insertion of Article 4 in the ICCPR itself was not without controversy, providing as it does an opportunity for nations with authoritarian tendencies to exert constraints on their citizens. Article 4 has been described as "the Achilles heel of the human rights doctrinal corpus" (Rajagopal 2003: 176). It was introduced during the drafting of the Covenant by Great Britain. While

²³³ Lowry (1996) notes that this focus on internal security in the late 1950s and 1960s was a major contributing factor to ABRI's increasing involvement in domestic politics and the development of the doctrine of "dwifungsi (I)" or dual function. In 1957 through the mechanism of a state of siege ABRI's involvement in government and the bureaucracy was formalised under the doctrine of Guided Democracy.

suspension of rights had previously occurred, the particular character of Article 4 was derived from Britain's anti-colonial wars, commencing with Malaya in 1948. These 'wars' were recast as 'emergencies' in order to manage rising anti-colonial and nationalist sentiment more generally and 'the masses' more specifically. The intention was to find a way to exert control that could not be construed as being about maintaining the empire but more benignly as being about 'law and order' (Rajagopal 2003: 177-180).

In this chapter I am not arguing for a diminution of constraints on states of exception in relation to non-derogable rights found both in the ICCPR and reflected in other international human rights instruments and many national constitutional and legal provisions. Rather, the lack of effectiveness of these constraints²³⁴ both at a national and international level raises questions as to whether a resort to 'legalism', including declaring and notifying states of exception, provides a veneer of constitutional respectability which allows abuse to flourish. In East Timor the UN was quick to make much of the fact that states of exception had been declared in conformity with the constitution (see e.g. UNMIT 2008g) but was more muted in its criticisms of the human rights problems that rapidly emerged.

7.7.3 The enduring state of exception as a portal for change

I have noted the reluctance of the East Timorese political leadership to wind up the Joint Command once the final state of siege was over, and how it continued even after it was wound up. In fact the leadership was not only reluctant to wind it up but were engaged in active speculation on, and promotion of, new activities that the Joint Command might be involved in. Continuing positive and nostalgic references to the Joint Command indicated that it may be considered a possible model for the future. Meanwhile, as described in chapter 5, it is now the norm in East Timor for the F-FDTL to be deployed alongside the PNTL for the purposes of maintaining internal security.

One of the arguments that is made about the nature of states of exception is that there is a danger that it is not always possible to determine what is an exception and what is not – they may be *de jure* or *de facto*, and in either case this can lead to an "enduring state of exception" where the "exception becomes the norm" (Agamben 2005).²³⁵ Authors such as Neal (2006) and Aradau and van Munster (2009) make a similar case. They differentiate between 'the exception' which refers to the events and situations that are designated as

²³⁴ A discussion of the lack of effectiveness of these constraints is contained in Gross (1998).

²³⁵ Extensive discussion about the different ways that emergencies have been conceived and categorised is outside the scope of this chapter, but further detail can be found in Gross and Ní Aoláin (2006).

‘exceptional’, and ‘exceptionalism’ which refers to those policies and practices legitimated by claims about the necessity of exception to the norm. Many such enduring states of emergency or cases of exceptionalism have been documented. This has been noted by Jayasuriya (2001) in relation to Malaysia and Singapore and Fombad (2004) in relation to Cameroon. The observation that emergencies have a capacity to become enduring suggests that, through the process of their implementation, an enabling environment for subsequent constitutional, legal, political and cultural change is created. Thus an exception has an inherent tendency to replicate itself, whether it is legally declared or, alternatively, produced in circumstances that can be regarded as synonymous with an exception. One of the ways that this occurs is through the phenomena of ‘shifting goal posts’. Gross and Ní Aoláin contend that emergency powers and authorities create precedents not only for future exceptions but also for future normalcy:

Whereas in the “original” crisis the situation and powers of reference were those of normalcy and regularity, in any future crisis government will take as its starting point the experience of extraordinary powers and authority granted and exercised during previous emergencies. What might have been seen as sufficient “emergency” measures in the past (judged against the ordinary situation) may not be deemed enough to deal with further crises as they arise (Gross and Ní Aoláin 2006: 228).

Analysis of the way in which states of exception have a tendency to justify their own existence is often confounded by the premise that one can differentiate between a ‘normal’ state of exception, conforming to its constitutional and legal constraint, and on the other hand deviations from this model that are regarded as ‘exceptional’ states of exception. That the great majority of exceptions are not normal, but rather deviate from the model in their application, is a further important point in understanding the concept “that the exception defines the norm”. Gross and Ní Aoláin argue that theorising of exceptions has been constrained or circumscribed by a tendency to focus on normal exceptions with correspondingly little attention to exceptional exceptions, when few exceptions actually conform to the normal model.²³⁶

At a purely formal level this concern is addressed by the ICCPR in the requirement that changes to the constitutional order should not occur during the state of exception. However, this provides little protection against the cultural changes that are facilitated through the process. In this section I argue that the continuation of the Joint Command after the end of the final state of siege, the failure of the F-FDTL to return to barracks, the

²³⁶ See Gross and Ní Aoláin (2006: 304-325) for an extensive critique of what they refer to as the “aberration hypothesis”.

repeated extensions of the period of weapons searches and an alternating use of a language of both crisis and reconciliation has produced an enduring emergency that justifies the continued deployment of the F-FDTL for the purposes of internal security, something for which they are not constitutionally mandated.

The states of exception in East Timor provided an opportunity both for the sense of 'emergency' to continue beyond its mandate and for the Joint Command to become a proxy of that enduring exception. Gross and Ní Aoláin (2006: 171-172) note that "the belief in our ability to separate emergency from normalcy focuses our attention on the immediate effects of emergency measures and powers while hiding from view their long term costs". Recognising that it is the 'exceptional' exception that is normal, I argue that it is also critical to acknowledge that emergencies not only have a possibility or capacity to become slippery, but are by nature inherently slippery. It is this slipperiness that produces the high propensity to manufacture enduring changes in legal culture and people's states of mind.

7.7.4 Rearranged relationships between international and national security actors

In this section I argue that the states of exception in East Timor served another function over and above responding to attacks on the President and Prime Minister and reconciling two warring parties, that of 'reclaiming' sovereignty from the international security actors.

By February 2008 the relationship between international and national security actors in East Timor was strained. The relationship deteriorated further following the implementation of the Joint Command. This was evidenced by the F-FDTL forcibly taking a suspect from UNPOL at gunpoint (OHCHR and UNMIT 2008: 7) and armed threats against UNPOL by the F-FDTL, military police and the Dili Task Force (OHCHR and UNMIT 2008). Off-duty incidents between international and national security forces became increasingly common. By the end of May 2008 the Joint International NGO security office started to warn on a weekly basis that

This office very strongly advises that NGOs to [sic] be cautious when dealing with security forces in the current environment. This particularly includes off-duty personnel who may be armed (Joint NGO Safety Office 2008e).

In a notable incident on 24 May 2008, F-FDTL members threatened GNR members with weapons at a nightclub (Joint NGO Safety Office 2008e). The following week off-duty PNTL and F-FDTL attempted to gain entry to another nightclub without paying. When UNPOL were unsuccessful in defusing the situation, nightclub staff decided that the

prudent thing to do would be to close for the evening (Joint NGO Safety Office 2008f). In yet another drunken fight in 2009 between GNR and PNTL at a Dili nightclub, an off-duty PNTL officer shot out the tyres of a GNR vehicle. Both the PNTL Commander-General and the Secretary of State for Defence publicly defended the PNTL members, criticised the GNR for being drunk, and ‘demanded answers’ from UNPOL. Neither of them raised the important question of why an off duty PNTL was carrying a firearm, contrary to the law (Pinto 2009). A final incident that illustrates the waning of UNPOL influence occurred in June 2009 when both UNPOL and PNTL intervened in a fight between youth gangs in Bobonaro market. UNMIT claims that the subsequent arrival and involvement of F-FDTL hampered UNPOL in carrying out their executive policing responsibilities (United Nations 2009b: 5). Once again the Secretary of State for Defence was highly critical of UNPOL and their account of events (Pinto 2009).

The leadership of the PNTL has become increasingly vocal regarding its disagreement with UNPOL’s control over PNTL in matters such as suspension for disciplinary breaches. When UNPOL arrested the Baucau District PNTL Commander, Inspector Adérito Neto, in October 2008 for impersonating a police officer, as discussed in chapter 6, the PNTL Interim General Police Commander, Afonso de Jesus, “argued that there should be a profound investigation into the case and that the result of the investigation should be made to the Timorese public before the UNPOL disciplined the PNTL officer”. He went on to state “his dissatisfaction with the supplementary agreement between the state of Timor-Leste and the United Nations where UNPOL has more powers while the PNTL has less power” (Radio Timor Leste 2008a).

The East Timorese political leadership continues to invoke the Joint Command most notably when opposing the ongoing presence of the ISF and UNPOL. On 30 September 2008 Prime Minister Gusmão lamented that, whereas East Timor is an independent country, the movement of its Defense Force and its National Police is limited while Australian soldiers carried weapons: “You cannot do it (i.e. carrying weapons around) while foreigners can; what kind of independence is this?” questioned Gusmão. He went on to request the officers of both F-FDTL and PNTL to keep the “spirit of joint operation” to show that they are ready to take responsibility of securing and defending the sovereignty of East Timor (Prove me you’re professional and I’m ready send the FSI and UNPOL back, says PM. 2008). Continuing positive and nostalgic references to the Joint Command are juxtaposed with demands for ‘sovereignty’ and ‘independence’, supporting the contention that the Joint Command is the model of the future.

7.7.5 Rearranged relationships between F-FDTL and PNTL

The problem of East Timor having a military with little tangible to do was discussed in chapter 5. Similarly the phenomenon of the F-FDTL encroaching on the area of internal security constitutionally mandated for the police was discussed in chapters 3, 5 and 6. Consequently, it is not the intention of this chapter to argue that something new started with the Joint Command. Rather, I argue that the states of exception provided an opportunity to accelerate and institutionalise the involvement of the military in internal security in such a way that it has become normalised. This was done in part through the manufacture of ‘crises’, such as the weapons collection program, and in part by deploying a language of reconciliation to promote the positive and harmonious image of two previously warring institutions working together in cooperative fashion. At the same time the militarisation of the PNTL which commenced with Minister Lobato has continued.

Many commentators predicted that the creation of the Joint Command would prove a dangerous undertaking (Wilson 2008; Virgoe 2008). This was not only because of the abuses anticipated, but also for fear of the consequences of placing PNTL and F-FDTL in such close working proximity. The institutions had a long history of enmity: it was quite soon after members of the respective institutions had been involved in killing each other in the streets of Dili in 2006, and no significant reform of either institution had taken place. Plenty of human rights abuses occurred, but the predicted bloodbath did not eventuate. The reasons for the apparently good relationship that developed are complex, and any analysis must be tentative. Some insight, however, is gained into the government’s rationale for the Joint Command from the 2008 Program of the Secretary of State for Security.²³⁷ In Section VI (“Achievements”) there is a subsection (e.) on Mending the Relationship between F-FDTL and PNTL:

Joint Command. The decision of establishing joint command was to (1) neutralize the rebellions who carried attacks on President and Prime Minister; (2) to restore the authority of the state in the villages; (3) reconcile the two forces (F-FDTL & PNTL) that where fighting against each other in 2006 crisis; (4) bring back IDPs to home villages and; (5) collect weapons around the country.

Social activities. The aim of these activities are to (1) build confidence between the two institutions; (2) mending their relationships after having bitter relationships during the crisis of 2006.

Joint patrolling aims to (1) improve cooperation of the two institutions (2) prevent and overcome crimes and violence and; (3) provide security to the people [quote inserted with original errors].

²³⁷ Parts of this were reproduced in the weekly newspaper *Tempo Semanal* no 8, 11 August 2008.

Apart from apprehending rebels it is clear that achieving reconciliation between the two forces by working together was an important part of the agenda for the Joint Command. It also provided the F-FDTL with something to do that drew on their training and allowed them to use weapons. It appears that having a common enemy served as a unifying point for the institutions. Whether that common enemy was the rebels being hunted or the threats to sovereignty embodied by the ISF and UNPOL is less clear.

A more complex reason for the 'success' of the Joint Command involves a nostalgic state of mind. This may be nostalgia for the resistance, inspired by once again being in the mountains together. It may also be nostalgia for the 'strong state' that is represented by the ABRI model. This is not to discount that Timorese were usually the victims of the police and military during the Indonesian occupation, but it appears that at this time in East Timor there is nostalgia for things such as subsidised rice and electricity, an enthusiasm on the part of government for doing business with Indonesians with military connections, and a favourable inclination to authoritarian modes of policing, familiar from the Indonesian occupation as well as embodied by the GNR in the contemporary context.

Jacqui Baker, who has written on police military relationships in Indonesia, provides a useful framework for thinking about nostalgia. She has noted that, apart from the often reported clashes between the police and the military in Indonesia, there is also a growing, but unregulated, cooperation between the TNI and POLRI in the area of internal security. She questions why POLRI has invited the TNI back into the management of day-to-day security when the organisations were so definitively separated in 1999. Her explanations revolve around a continued "belief in the kinship of ABRI" often created by TNI and POLRI having trained together, but notes that "police affection for ABRI is also tinged with unease about the tenure of police authority over internal security". She claims that historically the police have been "long discredited within the military family as a corrupt, bumbling institution" and that there is recognition on the part of the police that their current autonomy and greater profile are at risk if the military once again achieves supremacy (Baker 2008).

The parallels with East Timor are striking. Not only is there nostalgia for a strong state model, as epitomised by ABRI, but arguably the PNLT feel safer having the F-FDTL on-side as the future is uncertain. PNLT have similarly long been portrayed as the hopeless bumbling idiots while the F-FDTL is considered to be more credible in relation to internal security. Whereas in the Indonesian situation bonds were created between police and military during training, in East Timor similar bonds were created during the resistance.

Myrntinen's observations on institutional loyalties in East Timor, discussed in chapter 5, are pertinent. He notes that members of F-FDTL and PNTL may have multiple loyalties which can often conflict. He argues that police and military in East Timor may have greater fealty to regional areas, political parties, family and clan networks and martial and ritual arts groups (Myrntinen 2008). It has already been seen that these multiple loyalties can trigger clashes between and within PNTL and F-FDTL. However, arguably these more complex loyalties could mask institutional conflicts in the interests of a sense of common history. A PNTL willingness to cooperate would be well received by the F-FDTL, long in search of something to do.

The current suite of security legislation formalises the use of a joint command as a matter of everyday rather than exceptional occurrence by focusing solely on the exception in the national security framework.²³⁸ By placing the separation of the constitutionally mandated separation of the role of the F-FDTL and PNTL to the side, one sees an example of Agamben's idea of the exception becoming the norm.

7.7.6 The national security laws as a case of "the exception becoming the rule"

Many authors have described how exceptionalism, referenced to the events of 11 September 2001, has been used to justify a range of illiberal practices including Guantánamo Bay detention camp, 'extraordinary rendition' of terrorism suspects, 'criminalising' of refugees, and a range of expanded police and immigration controls and powers (Neal 2006; Aradau and Munster 2009). Neal (2006: 35) has noted that "on 11 September everything changed...The meaning and interpretation of the event are now thoroughly incorporated into a regime of legitimisation for exceptional sovereign practices".

By placing the events of 11 September 2001 and the events of 11 February 2008 alongside each other in the explanatory statement of the Law on National Defence, a legitimisation of exceptionalism flowing from 11 February is made. The East Timorese government is aware that there are parts of the international community that are not enthusiastic about the "blurring" of the roles of the police and military anticipated in the draft National Security Law. The East Timorese Secretary of State for Defence notes this in his August 2009 blog, which is highly critical of the role of the UN in the area of security sector reform, promotes the new suite of legislation and stresses the importance of genuine rather than token sovereignty for East Timor:

²³⁸ At a more practical level joint training between F-FDTL and PNTL was announced in November 2009 (F-FDTL – PNTL Hakarak Hamutuk no Lakohi Tane Liman. 2009).

The National Security Law is also indispensable because it regulates cooperation between the F-FDTL, the PNTL and Civil Protection in emergency situations. In fact, the Organic Law of the Ministry of Defence and Security, which has already been approved, foresees an Integrated Crisis Management Centre. Therefore we must be organized to provide assistance to the population in emergency situations, e.g. caused by some natural disaster. Although I have received no such official information, rumours have it that the National Security Law is not appreciated by the UN, as they say it militarizes the police. I hope that this information is not accurate (Pinto 2009).

Thus it can be seen that the invoking of 11 September alongside 11 February is speaking not only to a domestic audience but is seeking to re-legitimize, in the eyes of an international audience, East Timorese sovereign control of their armed forces. It also seeks to institutionalise pre-emptive exceptionalism as the act of a responsible nation-state.

7.8 Conclusion

The implementation of the states of exception and the Joint Command in East Timor in response to the events of 11 February 2008 produced a situation where rule of law unraveled and the F-FDTL and the PNTL carried out abuses with apparent impunity. Rather than this being of concern to the East Timorese government, it was seen as a successful way to resolve tensions between the two forces. In chapter 5 I discussed the development of a culture of legal and judicial impunity in East Timor and how this affects the practice of police work. This chapter further illustrates the comfortable fit between impunity and states of exception.

At another level this chapter illustrates the difficulties encountered in the promotion of local ownership of security sector reform. The creation of the Joint Command with its associated legal, developmental and human rights problems was an assertion of local ownership not entirely anticipated in the model imagined by international police builders.

The continued deployment of F-FDTL in roles constitutionally mandated for the PNTL suggests that the Joint Command model is seen as a suitable way to keep the F-FDTL occupied, as well as minimising the role of the PNTL, who are frequently perceived as having little political legitimacy or technical competence to carry out their assigned role. At the same time the PNTL have become increasingly militarised with disproportionate attention and resources allocated to special units, and all future basic recruit training to be carried out by the paramilitary GNR. This situation is now being formalised with the consideration of draft legislation that both valorises the Joint Command and institutionalises the move of the F-FDTL into internal security with legislation that ensures the exception has become the norm.

I have argued that the use of 'crises' manufactured a situation where the extraordinary use of the military for internal security became the norm, both tangibly and in the collective imagination. There was a change in 'the state of mind' that occurred through the Joint Command, allowing the 'retaking' of sovereignty from international actors, who are now only tolerated for the material resources and international confirmation of successful rather than 'failed' statehood they provide. The UN was ultimately compromised and sidelined by the states of exception and the Joint Command, and their ability make a significant contribution to security sector reform remains doubtful in the circumstances.

The failure of the East Timorese government to consult with the UN before establishing the Joint Command, the limited mandate (and will) of the UN to exert any control over the human rights abuses committed by the Timorese security forces during the states of exception and the continuing inability of UNPOL to effectively command the PNTL all make it clear that this aspect of the work of UNMIT has certain fictive elements. The unsuccessful enactment of a ritual of police reform and security sector review described in chapter 6 has paved the way for the unchecked development of exceptionalism described in this chapter.

Chapter 8

Conclusions

8.1 Introduction

In this concluding chapter I provide a brief summary of the thesis, identifying the main themes that emerged in each chapter. I describe the four main themes that underpin the thesis and my research questions outlined in chapter 1 – namely local context, local ownership, how relationships condition police-building outcomes, and what we can conclude about the capacity of the UN to construct or reconstruct post-conflict police forces and the UN's attendant organisational responsiveness to things learnt along the way. Contributions made by the thesis, as well as its limitations, are outlined.

8.2 Summary of thesis

This thesis has examined the development of a post-conflict police force, the Polícia Nacional Timor-Leste (PNTL), under international and national auspices. I have covered the development of the police force over a decade, from before the inauguration of PNTL through two periods of United Nations responsibility for executive policing and development of the national police force. Development of PNTL by the sovereign government also occurred between periods of UN control, as well as at the same time as the UN since 2006. I have primarily conducted this analysis at an 'all-of-state' level. I show how a variety of historical legacies and contemporary contexts influence the environment in which police-building occurs and examine institutional limitations to addressing these contexts. I also examine how the local ownership 'trope' both illuminates and influences outcomes.

Chapter 2 responds to the exhortation in the literature to 'pay attention to the local context' and is premised on a conviction that 'history matters'. I scrutinise features of autochthonous East Timorese social organisation that were harnessed and reinforced by Portuguese and Indonesian occupying powers. These include an enduring partiality for local dispute resolution mechanisms, a martial heritage characterised by unstable alliance-making, a preference for exercise of personal rather than institutional power, and a related historical ambivalence about the rule of law. Contemporary East Timor is characterised by societal fault-lines imbued with legacies of suspicion and violence. All these legacies have powerful influence on East Timorese state and nation-building and police development.

Chapter 3 examines the development of the East Timorese police force under UNTAET and subsequent sovereign government control up until the crisis of 2006. UN assessments of the process were initially very positive. International donors and human rights

advocates, however, became increasingly alarmed, reporting the many shortcomings of PNTL and expressing deep reservations about the institution's readiness for independent existence. The way the UN organised its international deployments made the nascent East Timorese police institution less sustainable. It did not help that police were deployed from over forty different countries with different policing styles. Nor did it help that deployment was slow, the police deployed were of poor quality and there was no coherent planning about what those police would do. A misapprehension by the UN about its task – believing it was confined to 'training' for the PNTL, coupled with their poor appreciation of local contexts, laid the foundations for the development of a fragile institution. Problems arose not only because of attempts to transplant a model of policing, albeit a largely implicit model, that had little resonance with Timorese expectations of policing and order maintenance. It also arose because of the manifest lack of skills on the part of the UN to attempt to coherently transfer a model of any description. Additionally the inclusion of Indonesian-era police in recruitment for PNTL, and their subsequent prioritisation for management positions laid down serious institutional fault lines.

From the debut of East Timorese control over PNTL, which saw the arrival of a shipment of high-powered military-style weapons, a fragile and divided organisation was exploited by the Minister of the Interior. He proceeded to mould an over-armed, undertrained, personalised and factionalised police force. The modalities of this development mirrored the historical legacies discussed in chapter 2, as he displayed his propensity for inappropriate and unaccountable exercise of power and use of force, the development of paramilitary police units personally loyal to himself, the encouragement of shifting alliances, and a disregard for the rule of law. The nature of the police increasingly reflected aspects of the Indonesian police, in particular a notable symmetry between the Indonesian *Brimob* and the new East Timorese special forces. While disorder was mounting in the 'centre' a variety of international and national actors 'on the periphery' were trying out new ways to accommodate justice and security needs not met by a weak police force and nascent formal justice system. These 'making do' localised experiments in policing and justice are under-recognised for the potential they hold for thinking about policing in a more context specific way. They can be considered a form of local ownership that corresponds more closely to local realities.

Chapters 4 and 5 examine two different kinds of post-independence 'context' which, in concert with previously described historical legacies, influence the development and function of the PNTL. Policing is considered an essential part of the rule of law environment and programming and central to any discussions on the security sector

environment or its reform. Policing thus sits at the intersection of these two important foundations of state-building, and a chapter has been devoted to each. Chapter 4 examines the rule of law project and the inchoate legal context in which it operates in East Timor. Through an examination of critical events and court cases I demonstrate the deep ambivalence of the political leadership about the rule of law. This is evidenced in public undermining of the judiciary, political interference in cases, inappropriate exercise of power, failure to act on recommendations for prosecution, a promiscuous use of pardons, the conduct of illegal acts and a very clear message that political considerations trump legal ones. Together with the limited reach of the formal legal system this has profound implications for how the police do their work. It is apparent in four different ways – the police operate in a broader environment of impunity, they take the law into their own hands, they are not able to abide by procedural requirements, and they very often refer matters to traditional authorities or carry out mediation themselves. The latter example of referring matters to traditional authorities or police carrying out mediation themselves reflects the realities of policing on the ground and does not have to be viewed as intrinsically negative. It is an example of local ownership of policing that has the potential to provide improved access to justice. Further research could illuminate the possibility of re-allocating a proportion of a policing budget to a form of policing that may prove more sustainable, and potentially less dangerous than forms currently being promoted.

Chapter 5 asks how the security sector reform project and the diffuse security environment conditions the building of a police institution. I note the importance of overlapping and multiple providers of security and insecurity. The imported policing model assumes a number of things – that there is a Weberian monopoly on the use of legitimate violence, that the respective roles of police and military are clearly defined, and that there is a willingness and capacity on the part of the government to provide civilian oversight and accountability of the uniformed forces. On the contrary, in East Timor there are many overlaps between state and nonstate security actors, with police officers arguably identifying more with their nonstate roles and memberships. Members of the government also utilise a range of state and nonstate security services for their personal and official needs. The distinction between the role of the police and military has become increasingly blurred and this is promoted by the government as a positive development. There are many examples of how police and military are not subject to adequate oversight and accountability mechanisms, further reinforcing the impunity concerns identified in chapter 4. Although this blurring of the roles of the army and police, contrary to international dictates, is a further manifestation of local ownership it is not one that I consider

potentially desirable in the same way that a closer examination of more localised policing may be. I take the position that blurring of the police and the army does nothing to further access to justice and policing services (in the broadest sense). On the contrary it has further extended impunity and seen an increase in human rights violations.

Chapter 6 briefly describes the 2006 crisis and associated unravelling of the PNLT and F-FDTL. It continues with an account of the foreign intervention to restore order, and the mandate of the subsequent UNMIT mission to assume executive policing and assist the government to rebuild police and review the broader security sector. The twin lenses of local ownership and local context prove very suitable for examining the separate police reconstruction and security sector review processes. These processes unfolded fitfully, unevenly and with poor coordination even within the UN; as they did so the respective 'contexts' of international and national actors amplified their steadily deteriorating relationships. This was evidenced by continual condemnation of international security personnel in very public forums by members of the East Timorese political leadership. Yet on an everyday level the relationships were characterised most sharply by the absence of actors from each other's spheres. The concept of local ownership served a largely rhetorical function with scant evidence of even an attenuated form of local ownership present in the actions of the UN.

Nonetheless, both sets of actors had strong motivations to produce a successful 'police reconstruction'. The East Timorese wanted their security forces back. They did not want to be considered a fragile - or even failed - state. The UN sought to redeem their tarnished reputation resulting from its first police-building efforts, and they wanted an exit strategy, all the more pressing because of the increasingly disengaged stance of their governmental counterparts. These estranged relations led to a slide into ritualistic processes in which they seemed to do things but did not actually do them. Although the driving forces of the actor groups were congruent their bearing differed. Different postures were observed; the UN alternated ritualism with retreatism; a stance heavily influenced by a particular discourse of local ownership. This is an invocation of local ownership which actually does nothing to further the autonomy and sustainability of East Timorese managed security institutions. Its purpose is to shield the UN from having to take responsibility for failing to fulfil their mandate.

East Timorese actors alternated ritualism with rebellion, a position also powerfully partial to a discourse of local ownership, albeit a divergent one. In turn this invocation is used to excuse and obscure a collection of mismanagement and malevolent stances towards co-

operating with international actors. Toward the end of 2009 it became apparent that despite a 'handover' of policing responsibility from UNPOL to PNTL having commenced, the PNTL had not been 'reconstructed'. This manifested as a handover infused with fictive qualities. Similarly it became clear that the crucial security sector review would never happen. By October 2009 most of the funding for the multi-million dollar UNDP security sector review project had been squandered. The project was quietly 'rebadged' as a capacity building project; remaining funds were awkwardly allocated to a technical radio repair program. This situation was able to occur because the stances of international and national actors towards each other, and their respective perverse invocations of local ownership, acted in a mutually reinforcing way to produce agreed fictions about police reconstruction.

In Chapter 7 I examined the states of siege, states of emergency and Joint military police Command that were initiated as a result of attacks on the President and Prime Minister in February 2008. Carl Schmitt's contention that 'sovereign is he who declares the exception' quickly became evident in the rearranged relationships between PNTL and F-FDTL and, significantly for this thesis, between international and national actors involved in police development. I argue a 'state of mind' had been reached which enabled East Timorese to resume sovereignty over their police, with all parties, national and international, ignoring the previously agreed fiction of UNPOL control over PNTL. It also marked the effective point of obsolescence, the downhill slide, for the UN police-building efforts. More frequent and insistent calls for police handover emanated from the political leadership and these calls were taken up by East Timorese citizens.

The states of exception concluded and the internationally preferred model of separation of the roles of the police and military gave way to an option quietly preferred by much of the East Timorese political elite. The military, enjoying greater political legitimacy than the police, became steadily more involved in internal security. This model is comfortably familiar from Portuguese, Indonesian, and arguably UN, periods of control. Carl Schmitt's contention that 'the exception becomes the rule' clarified in 2009 when a suite of security legislation was presented to parliament valorising the Joint Command and explicitly using the word "blurred" to describe the evolving relationship between the police and the military.

I argue that the development of exceptionalism in East Timor was an assertion of sovereignty, steeped in a discourse of local ownership. This was not part of the repertoire of outcomes anticipated by the UN. The development of the joint command, best understood as a snub to the efforts of the UN, led to the UN taking uncomfortable refuge

in the deployment of local ownership discourse, albeit the local ownership that seeks to evade responsibility for failure. I conclude that one of the risks inherent in the ritualism described in chapter 6 is that, when it fails, it prepares fertile ground for the emergence of exceptionalism.

8.3 Four major themes

Four interrelated concepts, posed as questions, frame this case study – local context, local ownership, relationships between international and national police-building actors, and the capacity and responsiveness of the UN in the conduct of police-building.

Context

In what ways does 'local context' feature in the development and outcomes of police-building under international auspices?

There is an extensive literature that seeks to elucidate 'lessons learnt' in the inchoate project of international police-building. Most commonly this literature emphasises that it is not possible to simply apply a foreign-derived template of police development to a new situation and states the necessity of 'paying attention to the local context'. There is, however, scant evidence that this idea makes the transition from the policy literature to implementation in the field. The fact that many formal institutions and infrastructure were destroyed during the departure of Indonesian administration in 1999 contributed to a mistaken belief on the part of the UN that they were confronted with a *tabula rasa*. Not immediately evident to the new administration was that there were many features of Timorese autochthonous socio-political organisation and indigenous institutions at the village level that had continued to function.

I do not contend that 'local context' stopped developing with the arrival of the United Nations in 1999. The experience of the United Nations style of administration, programming initiatives and the enormous influx of foreign ideas, workers and businesses into East Timor contributed a further layer of context to that already present. In this thesis I note particularly the introduction of rule of law and security sector programmes. In addition, the social and political dynamics and histories within East Timorese society continued to develop – once again another layer of context.

In answering the research question about what ways 'local context' featured in the development and outcomes of internationally auspiced police-building, I note that at a most basic level little to no guidance is given to UN personnel on the history and culture of East Timor, either before or after arriving in the mission environment. No practical

direction is provided on how to 'pay attention' to these factors in the conduct of their work. Critically UN police arrive for short rotations, without the benefit of language, unaware of local legislation, and rarely mix socially with their counterparts. The possibility of appreciating the local context let alone being able to do anything with it is rather attenuated. I will argue, below, however, that individual innovators amongst international police were instrumental in developing hybrid policing mechanisms that drew on traditional authority in a way that indicated a better apprehension of local context. Although local ownership is something that is usually seen to reside in the local population these initiatives responded to local realities, and were supportive of existing mechanisms used for the maintenance of order. However, at the level of mission leadership this apprehension of context or ability to innovate is missing, evidenced at the most basic level by all documents designed for communicating with either the PNTL or their civilian ministry being produced in English and all joint meetings being conducted in English. This evidences a lack of commitment to even the most attenuated form of local ownership

Local context is an amorphous concept and impossible to exhaustively catalogue. The thesis contends, however, that many identified features of East Timorese social and political organisation are at odds with the stated aims of international police development, as encapsulated primarily in UN documents. In particular, notions that a police force should be democratic, impartial, formally accountable, minimalist in the use of force, and constrained by the rule of law meet with a distinct ambivalence. There *is* support for these concepts but they appear difficult to reconcile with counter practice where personal power is paramount and martial heritage is both valorised and ubiquitous. Inchoate ideas about community policing are promoted by the UN, while primary development efforts on the part of PNTL are directed towards their paramilitary special forces. Similarly, the enthusiasm of international actors to ensure a separation of police and military function is met with East Timorese approval in theory, but this approval evaporates in practice. The international ideal of a unified police organisation with a pre-eminent role in the exercise of policing does not correspond to the reality of the PNTL. Surveys indicate that very limited numbers of people view PNTL as the principal organisation for ensuring law, order and security. Further, the institution is fragmented and anxious and does not command the principal loyalties of its members. Such fealty is owed either to one's police unit or more commonly to one of a host of martial arts or other armed organisations. A highly centralised policing institution has developed with little devolution of resources to the districts, thereby failing to provide substantive state-based policing to the rural locations where most people live. The difficulty of doing police work in East Timor, as conceived in

the international model, is accentuated by weak, overloaded and poorly functioning judicial institutions.

One can conclude that although the UN has had plenty of time to apprehend local context that an apparent lack of institutional suppleness and responsiveness prevents this being applied in a meaningful way. In particular, that so few people turn to East Timorese state-based police for their policing needs has not been factored into planning or allocation of resources. It is likely that an opportunity to improve access to justice and policing services has been missed through believing that it is only through transferring a western model of policing that policing can be improved.

Ownership

What notions of 'local ownership' are deployed by international and national actors in the development of a post-conflict police force, and how do these notions manifest?

A more recent addition to the policy literature is the idea that 'local ownership' is an essential determinant of police programming success. It is clear that the term local ownership carries with it a variety of ill-defined meanings, and its popularity can be attributed not only to being a signifier of good-hearted intent, but also to its ready value as a rhetorical device. The process of thinking through what local ownership might mean over and above being an aspirational statement – whether it is something that international actors have the capacity to 'bestow', and whether local ownership was what international police-building actors really had in mind – has not been adequately developed. The term was not in use during the construction of the police during UNTAET, but I conclude there was little inkling by the UN of the importance of anything corresponding to local ownership. By the time that UNMIT commenced the term had well and truly entered the lexicon.

In the thesis I propose a variety of understandings of the term. I contend that local ownership can be conceived on a spectrum, not terribly distinct from earlier ideas such as Arnstein's 'ladder of citizen participation'. By analysing policy documents and public statements about local ownership we can discern degrees of intent and practice in a linear fashion. This is a useful and educative way to encourage participatory development, and in this construction it is easy to argue that 'more is better'.

However, the inherent paradoxes of the term require closer examination. Local ownership of security can in some instances lead to bad outcomes, and that is when international intervention is required to address the shortcomings of local actors. Additionally, the term

is dishonest, as it implies that recipients can choose what aspects of the programme they like and don't like; in reality the package is non-negotiable. A final paradox emerges as 'local' is usually shorthand for 'local political elite'. This is an oversimplified understanding of the post-conflict condition when a great number of actors vie for voice, power and the approval of international actors. It also excludes the security needs and perspectives of those less visible – including women, children, the poor and the vast majority of non-urban dwellers. It is not possible to satisfactorily 'add local ownership and stir' into a highly centralised, urban and elite oriented police prescription.

In addition to such paradoxical considerations, I advanced the idea that the term has some more perverse utility. I argue that the fraught relationship between international and national actors encourages use of the term by national actors to justify inappropriate behaviour, malevolent conduct or any number of varieties of 'spoiling'. Similarly international actors can use the term to wash their hands of, or fail to take responsibility for, a deteriorating situation. Using the term in such perverse ways is facilitated, however, by the positive semantic connotations of local ownership. Like motherhood, or eating your vegetables, it is hard to disagree with. Yet, these differing invocations of local ownership by both parties have produced an outcome that is more than the sum of its parts. Indeed, these stances act in tandem to mutually reinforce fictions associated with police construction and reform.

The thesis documents two previously un-noted but divergent invocations of 'local ownership' that have not appeared in the literature before. First is the local ownership displayed by the East Timorese government in ordering, contrary to all agreements, the assumption of Timorese military control over the police for the joint command in 2008. The UN responded to the humiliation of having its authority sidelined by itself invoking local ownership, not because it approved of the actions, but by way of avoiding criticism for limited outcomes in reforming the security institutions. I argue this use of the term hastened UN obsolescence in police-building.

Second, East Timor has had a difficult and conflicted history under Portuguese colonial rule and Indonesian occupation that is still evident in a variety of societal fault lines since independence. Further, these periods of earlier East Timorese history reinforced a number of pre-existing features of East Timorese society. In part due to the exigencies of geography and geomorphology much of East Timorese existence is based on subsistence, or sometimes less than subsistence, agriculture. This conditions many settlements to be small and often isolated, with a high dependence on others in the clan group. This

manifests in attendant localised identities and localised problem solving around traditional leaders, including in the domains of justice and security. Coupled with a history of centralised and authoritarian occupying states that have generally not provided justice and security in a form that is acceptable to the needs of predominantly rural dwelling people, there has been a continuation of localised mechanisms. After the restoration of independence state institutions, including the police, have continued to be fairly centralised with limited capacity and few devolved resources. Consequently PNTL stationed in the rather large margins of the state, like everyone else, remain dependent on the human capital and authority of traditional institutions. Arguably the hybrid mechanisms that have developed, through the initiative of a variety of international and national actors represent an under-documented, and possibly under-utilised, kind of local ownership. Given that local ownership is only ever conceived of in the literature as being at an all of state level, this highly geographically localised form of ownership deserves further attention.

Relationships

In what ways do relationships between international and national security actors condition the outcomes of post-conflict police-building?

One of the ways that a failure to pay attention to the local context is evidenced is in the implementation of police-building projects that are a series of technical and foreign-derived transplants. In more critical studies of police-building an attempt has been made to emphasise the deeply political nature of police-building, with the exhortation that it must be realised that the task is a political and not a technical exercise. This thesis underlines the deeply political nature of police-building in East Timor, with long-enduring legacies from previous eras of foreign control. However, the failure of international police builders to arrive equipped with even the most basic technical policing competence has complicated the story. In fact, I contend that technical failures have been so manifest that they have become part of the political, and hence local, context.

These political difficulties are exacerbated by the lack of a common language of communication, East Timorese concerns to maintain sovereignty over their uniformed forces, and the structural constraints of the way that the UN organises its deployments. Failure to establish these relationships is reflected in poor development and reconstruction outcomes for the PNTL and in a failure to conduct a mandated security sector review.

Although differing in underlying motivations, both sets of actors would like to produce a 'successful' police reconstruction process and a handover to East Timorese authorities that

would enable the UN to exit from their current role in East Timor. The poor relationships that have resulted in poor police development outcomes have produced motivations to appear that reconstruction has taken place. However, in order for handover to occur everyone must play along a little longer. The way that the charade of police reconstruction can be concluded most efficiently is for all actors to agree, in the face of much evidence to the contrary, that the police have been reconstructed. This requires the enactment of a ritual of graduated and responsible 'handover' of policing, infused with the language of local ownership, from those that have no authority (UNPOL) to those that have no sustainability (PNTL). In addition to ritualism the UN invokes local ownership discourse to absolve itself for responsibility for the outcomes, a stance that can be characterised as 'retreatism'. The East Timorese political leadership, in addition to ritualism, engages in 'rebellion', as a result of frustration at the police development process, and as a way of retaking sovereignty of their uniformed forces.

The ritualism that has developed is most evident in the multi-layered fictive qualities of the UNPOL to PNTL policing handover. These fictions relate to the legal and policy framework of the handover, the relationship between those tasked with reform and the recipients of the process, the capacity of UNPOL to reconstruct the PNTL and monitor the handover, as well as the capacity of PNTL to operate independently, demonstrating both capacity and integrity.

The failure to reconstruct the PNTL illustrates the dangers inherent in this kind of ritualism. Although at the end of 2009 East Timor is considered calm, an unreconstructed police force presents great dangers for the future. The failure to develop a police force that is legitimate in the eyes of the community and the political leadership leads to exceptionalism and a corresponding consolidation of military involvement in internal security. The exceptionalism is evident in draft security legislation that references not only the East Timorese states of exception, but also the events of 11 September 2001 in the United States, to justify blurring the division between the police and military.

Capacity

What can we conclude about the capacity of the UN to construct or reconstruct post-conflict police forces?

Even when individual practitioners within the UN have a reasonable awareness of the local context, there are a number of reasons it is difficult to apply this knowledge. For a variety of structural reasons the UN, as well as other bilateral police organisations, does not have a lot of organisational suppleness or 'wriggle room' to contemplate doing policing in another

fashion. In developed countries it is now widely recognised by policy experts and academics that 'policing' will be carried out by a range of actors broader than the police. Yet this understanding does not appear to make the transition to implementation of police-building programmes. East Timor is no exception in having a plethora of providers of security and insecurity. International programmes are clearly 'police' programmes rather than 'policing' programmes, with the intended 'output' being a police institution, with the 'outcome' of improved order and security in a broader sense presumed to follow automatically. Although undoubtedly there is a place for the police in a country such as East Timor, particularly in more urban areas, there is an assumption that provision of policing solely by the state is self-evidently preferable. This fails to apprehend that all of the reasons that nonstate policing is considered dangerous and unreliable, including lack of accountability, hidden power structures and lack of adherence to human rights standards, all apply in equal measure to state-based policing in post-conflict situations. This policy blindness prevails in the face of empirical research that demonstrates that most people continue to choose actors other than the police for their justice and security needs.

While it is unrealistic to expect to build credible state institutions in just ten years when it took other new states centuries to build through trial and error, what does get built is rendered less serviceable by the fact that the UN wants to be able to report, and is expected to report, that it has completed something tangible in a short period of time.

Although the literature contains many critical assessments of the performance of UNPOL this thesis provides a more focused example of UN police-building that failed, but where an opportunity was provided for the UN to rectify the mistakes made the first time. The organisational impermeability to many of the lessons provided by the first experience, coupled with the unwieldy way in which the UN continues to work, leads to a conclusion that the organisation does not have sufficient capacity or suppleness to respond to lessons learned about post-conflict police-building. Consequently it can be argued that the UN is not the right organisation to lead such important work. This is of broader application than just East Timor and may well apply, for many of the same reasons, to many of the post-conflict situations in which the UN seeks to build or reform police organisations.

8.4 Contributions and limitations of the research

The thesis is the first full length study of the construction and reconstruction of the East Timorese Police. It provides a case-study of a post-conflict police force that has been (re)constructed under the same international auspices, in the same place, on two occasions.

This offers an opportunity to determine the responsiveness of the UN to the things that have been, or should have been, learnt.

The UN has been afforded a number of opportunities in East Timor that should have augured well for state- and police-building. These included an unparalleled mandate in 1999, a relatively benign security environment, an initially welcoming population and leadership, extended international support and the opportunity to rectify mistakes made in the first attempt at police-building. That the organisation was unable to respond to these opportunities has far reaching consequences. This thesis has outlined the consequences for East Timor where there has been a failure to build a credible and functioning police institution. However, the thesis also points to the implications of this for the broader UN role. If the UN is unable to undertake this task in East Timor there is little chance of success in more complex post-conflict environments. This demands a re-thinking by policy and decision makers of the UN role in police-building. As the assumptions inherent in broader state-building are essentially congruent with those underpinning police-building it also demands a broader re-examination of an institutionalist approach to state-building that does not adequately address the historical legacies and pre-existing social structures present in the receiving context. It also invites further questioning by the academy of the implications of these findings. Does the presumed self-evident desirability of attempting to improve access to justice and policing through transfer of Western-based models of centralised state police and justice institutions require an approach more genuinely attuned to local context, existing realities and people's choices about their service providers? What happens more broadly, in places other than East Timor, when the legacies of history in a particular context interact (in possibly perverse ways) with attempts at transmission of models derived in places with radically different histories and social organisation?

The literature on police-building does not address the importance of relationships. This thesis makes an original contribution by providing a case study of how relationships between international and national actors condition the outcomes of an internationally managed police construction and reconstruction process. The thesis interrogates these relationships, demonstrating how discourse on local ownership, combined with failure to apprehend critically influential local context, moulds and conditions the outcomes of the police-building exercise. The thesis shows, however, that the context as experienced by international actors means they are organisationally constrained in apprehending these issues. Further academic investigation of how relationships condition outcomes in police-building or state-building more broadly, and in specific locations should yield further important understandings of this critical issue.

The thesis contributes to the local ownership debate by showing that the debate as outlined in the literature is principally confined to a matter of simple metrics regarding “how much” local ownership is allowed or appropriate on an essentially sliding scale. The thesis expands the current debate by providing some innovative ways of understanding the use of the local ownership trope by different actors. It shows how international actors invoke local ownership in an attempt to avoid responsibility for their failures, and national actors invoke the concept to excuse sometimes inexcusable behaviour and ‘spoiling’. The thesis goes on to show, furthermore, how these stances mutually reinforce each other to produce fictitious police (re)construction outcomes. I conclude that the complexities of the term local ownership require much closer interrogation by both policy makers and the academy if the term is to be used in a healthy and empowering , as opposed to perverse, way.

Informed by Braithwaite, Makkai and Braithwaite’s regulatory ritualism framework, previously applied to the aged care environment and other contexts, I apply this notion to the police reconstruction process in East Timor to show how actors representing the two ‘sides’ of the process display particular responses to an untenable and dishonest compromise regarding ‘ownership’. Organisational limitations, combined with divergent discourses of local ownership, encourage the multi-layered fictive nature evident in the police reconstruction exercise and obfuscation surrounding the security sector review. The failure of international and national actors to relate is underscored by congruent agendas where all actors would for differing reasons like to ‘see the back of’ the police reconstruction process. In the thesis I contend that there is a critical connection between this ritualism and the exceptionalism that commenced following the events of 11 February 2008. This exceptionalism not only served to rearrange relationships between international and national actors, but also between the F-FDTL and the PNTL. The connection between regulatory ritualism and exceptionalism in broader circumstances would provide an exciting avenue of academic enquiry, with particular potential to inform understandings of how these phenomena together influence police and justice development activities in post-conflict situations.

The inquiries of this thesis have been limited by the amount of time that could be spent in the field. This in turn has meant that it has not been possible to carry out comprehensive interviews with as broad section of the PNTL as I would have liked. It has also meant that little emphasis could be given to investigating the way that nonstate security actors ‘do policing’, or the mechanisms of the hybrid forms of policing that have evolved.

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